Reforming Victoria's Planning System

Local Government Sector Submission

April 2025

MUNICIPAL ASSOCIATION OF VICTORIA

No one understands the challenges and opportunities facing Victoria in the 21st century better than local councils. From rapidly evolving technology to social changes, shifting economies to environmental pressures, our local communities and the governments that represent them–are at the forefront of multiple transformations happening simultaneously.

As the peak body for the Victorian local government sector, the Municipal Association of Victoria (MAV) offers councils a one-stop shop of services and support to help them serve their communities.

ACKNOWLEDGEMENT OF COUNTRY

We acknowledge the traditional custodians of the land on which we live. We recognise their continuing connection to land, waters and culture and pay our respects to their Elders past, present and emerging.

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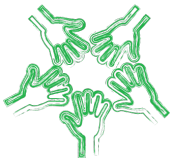

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[1] Endorsed by MAV State Council in October 2023.

1 Executive Summary

The MAV welcomes the Victorian Government's commitment to review and rewrite the *Planning and Environment Act 1987*. The opportunity to modernise and reimagine the planning system to meet Victorians' needs now and into the future is important and exciting.

The *Planning and Environment Act 1987* provides the framework for communities to clarify their view of the future through strategic planning. The Act sets rules about the use and development of land, and it establishes a framework for making, amending, administering and enforcing those rules. It sets out how elected decision makers, professional planners, local communities and developers interact to plan every part of our state.[2]

Despite having grown to three times its original length, the Act has mostly served Victorians well. But it is now 37 years old and, like the planning system it enables, it is overdue for comprehensive review and reform.

The history of planning reform in Victoria is a difficult one. Frequent attempts to alter the planning system to reduce complexity, provide certainty and improve efficiency have failed to live up to their objectives. A primary cause has been the dislocation of planning system designers in state government from the planning system's primary administrators in local government. The failure to reconnect them despite repeated recommendations in past planning system reviews is frustrating.

Some details have started to emerge about the scope of the state government's latest review: an 'initial review' is to be conducted in 2025 and a more comprehensive review will be a question for the future. Local government is concerned that these proposals will repeat past mistakes and will not lead to a fit-for-purpose planning system.

There is a better way.

This submission proposes a planning reform model that will integrate system designers in state government with system administrators in local government. It will allow for new ideas and mechanisms to be tested before they are introduced. It prioritises reforms that will meet the foremost challenges of the day: housing supply, location and affordability; climate change, natural hazards and environmental sustainability; and delivering infrastructure where and when it is needed. The submission makes 16 recommendations to achieve this.

A comprehensive program of reform that balances all the objectives that a planning framework must deliver is not an easy undertaking. But the prize for all Victorians will be worth it.

If state and local government together builds a planning system based on integrity, accountability and transparency, with locally and regionally responsive planning that enables public participation and confidence, we will create the social licence necessary to facilitate transformative change. If Victoria is to meet its housing, climate, environmental, economic and infrastructure challenges, nothing short of transformative change will do.

Local government stands ready to facilitate that change. We want to bring about thriving, resilient and inclusive communities. It is in that spirit that the MAV puts forward this submission: a comprehensive program for Victorian planning system reform.

[2] Adapted from the Planning Minister's second reading speech, p492, Legislative Council Hansard 24.03.1987

2 Recommendations

The 16 recommendations found throughout this submission are consolidated here. References to “the reform program” mean the Victorian Government’s September 2023 commitment to review and rewrite the Act.

Recommendation		Ref
1	That the Government maintain its commitment to review and rewrite the *Planning and Environment Act 1987* and, by extension, the planning system, subject to the other recommendations in this submission. A comprehensive review is necessary if the planning system is to effectively facilitate the transformational change needed for Victoria to meet its housing, climate, environmental, economic and infrastructure challenges, while maintaining its social licence.	5.1
2	That the reform program adopt as an objective the design of a planning system that provides integrity, accountability and transparency in decision-making in relation to all decision-makers.	5.2
3	That the reform program be rephased to ensure that the performance of the planning system as a set of integrated frameworks can be considered as a whole, with a view to consolidating duly considered reviews of each framework into one Bill to introduce a new principal Act to replace the 1987 Act, and to avoid piecemeal changes to the 1987 Act and planning system before then.	5.9
4	That the reform program avoid the situation of two principal Planning and Environment Acts being in operation concurrently other than to allow for a short transitionary period.	5.9
5	That the reform program be redesigned to allow for: 1. The collection of relevant data and evidence; 2. Start-to-end oversight by a collaborative body of state and local government system designers and administrators; 3. A shared understanding of the causes of problems in the planning system; 4. A shared agreement of reform objectives and performance measures; 5. A shared agreement on a strategy for regulatory expression; and 6. Strong public communication about the purposes and progress of the program.	6.7
6	That a statutory body including a balance of state and local government system designers and administrators, with provision for additional expert advisors, be established to oversee the continuous review and improvement of the VPP and to maintain a structured approach to planning system user feedback and engagement.	6.8
7	That a review of the objectives of planning, and the objectives of the planning framework, be conducted as part of the redesigned reform program. This review should enable meaningful public discussion and consider: 1. A new objective “to achieve and maintain net zero greenhouse gas emissions”; 2. Expanding the objectives of the planning framework to include integrity, accountability and transparency in decision-making, provide for subsidiarity, provide food security, facilitate high-quality and sustainable design and provide a sustainable transport hierarchy.	7
8	That the new Act: 1. Update the definition of affordable housing;	8.2

	2. Provide a head of power to enable, in future, a modest affordable housing contribution to be required with new development generally. 3. Provide a head of power to enable mandatory affordable housing contributions through planning controls, to allow for future strategic planning work to introduce such controls where justified.	
9	That the Government fast-track completion of Stage Two of the ESD Roadmap in a way that gives full effect to the local government 'Elevating ESD Targets' planning scheme amendments, providing full coverage of strong ESD standards through the particular provisions to all new buildings.	9.2
10	That the Government apply a new method for introducing and updating flood- and erosion-related land management overlays in planning schemes. The method should provide for: 1. One amendment, exhibition, panel and adoption per strategic exercise (e.g. per catchment or per coastal region); 2. The relevant Minister or delegate being the planning authority; 3. The amendment being considered by a specialist standing panel; and 4. Affected councils, being the primary administrators of municipal planning schemes, being guaranteed significant opportunities to make submissions.	9.3
11	That the new Act consolidate Development, Infrastructure and Open Space contributions in such a way that: 1. Ensures all state and local infrastructure requirements can be met on a fair and equitable basis; 2. Funding gaps are quantified and funding shortfalls provided for; 3. Existing contributions schemes that work well are grandfathered; 4. Both the state and local portions of infrastructure contributions being expended in the precinct or region in which they were collected; 5. No council is worse off under a new scheme; and 6. Provides transparent and regular reporting on infrastructure revenue and expenditure at the state, municipal and precinct level.	10
12	That the government commit to reviving Regional Growth Plans for each region in the state (including metropolitan Melbourne), co-designing those plans with councils with generous public engagement, and expressing the policies in the Planning Policy Framework at the regional scale.	11
13	That the reform options in the 'structure and content of the VPP and planning schemes' not proceed until a detailed paper setting out the purpose, objectives and strategy of the reform program, as well as proposed consultation mechanisms and meaningful opportunities to test the new provisions, are provided. In the interim, ensure that proposed changes to the VPP are published at least 60 days prior to introduction to allow for meaningful consultation with system administrators.	12.6
14	That the reform options in the 'planning scheme amendment process' theme be pursued subject to the conditions set out in the submission, after first exploring and co-designing the new provisions with planning system administrators in local government.	13.7
15	That the reform options in the 'planning permit process' theme be pursued (with the exception of the 'no objection' deeming provision for referrals, and the proposed fee sharing arrangement, which should be abandoned) after first co-designing the new provisions with planning system administrators in local government.	14.8
16	That the reform program ensures that the other frameworks enabled by the Act are adequately reviewed by state and local government planning administrators working together, before consolidating updated provisions into the new Act.	15.4

3 About this submission

Purpose of this submission

The purpose of this submission is to set out a consolidated local government position on how Victoria's planning system should be reformed. It calls for a planning system that can meet current and future challenges while producing better development and land management outcomes.

This submission does not respond to a formal request for submissions. It does, however, seek to influence the scope, timing and methodology of the Victorian Government's review of the planning system.

This submission cannot be a complete account of Victorian councils' views about the planning system. It documents local government's aspirations and concerns for the planning system at a particular moment in time, with the intention that it will inform future more detailed submissions and advocacy initiatives by the MAV.

How this submission was written

This submission was informed by:

- *Local Government's Vision for Planning in Victoria* (see page 3);
- other resolutions of the MAV State Council;
- past submissions from MAV to the Victorian Government on planning and environment policy matters;
- responses to requests for information from local government planners; and
- a limited review of available literature.

This submission was drafted under the guidance of the MAV's Planning Reform Working Group, established to advise the MAV on planning system reform. The working group membership includes executives and senior officers overseeing statutory and strategic planning functions across 20 councils, from inner, middle and outer metropolitan Melbourne, growth and peri-urban regions, regional cities and rural councils.

A discussion paper foreshadowing the contents of this submission (including drafts of sections 12, 13 and 14) was circulated to planners in all councils in March 2025. This submission was updated to reflect feedback received. The submission was informed by specific case studies, data, insights and critique from across Victoria's 79 councils, while also being informed by MAV State Council resolutions made by all member councils present. The submission was endorsed by the MAV Board on Friday 11 April 2025.

Definitions

In this submission:

- 'the Act' means the *Planning and Environment Act 1987.*
- 'DTP' means the Department of Transport and Planning.
- 'VPP' means the Victoria Planning Provisions, subordinate legislation of the Act that determines the structure of planning schemes, including statewide controls and policies common to all planning schemes.

4 Victoria's planning system

4.1 The Act

On 20 September 2023, the then Premier of Victoria announced *Victoria's Housing Statement, the decade ahead 2024-2034.* The Housing Statement contained the first commitment by Government to review and rewrite the *Planning and Environment Act 1987* since it commenced nearly 36 years earlier:

> ***Build a modern, fit-for-purpose planning system***
>
> *We'll review and rewrite the Planning and Environment Act 1987 to build a modern, fit-for-purpose planning system. We'll look to establish and clarify timeframes for decisions, as well as looking at the roles and responsibilities of everyone involved in our planning system – including councils, the Minister for Planning, the Victorian Planning Authority and the Department of Transport and Planning.*

The 1987 Act, itself an overhaul of the previous *Town and Country Planning Act 1961*, originally contained 210 Sections across 11 Parts. Today, the Act contains 630 Sections across 25 Parts, and will expand again to encompass 26 Parts by September 2025.[3]

The bulkiness of the Act today, and the proliferation of subordinate legislation it has enabled over 37 years, has attracted a myriad of critics. While planning practitioners and all users of the planning system may disagree on the causes and solutions for problems with the planning system, most agree that a review of the principal Act is overdue. The MAV is among them:

> *The MAV has long been calling for reform to the Planning and Environment Act. It's more than 35 years old and while it's been tinkered with around the edges, it needs to be reimagined to meet the challenges of the 21st century and beyond.*[4]

The original 1987 Act was a notable achievement by the Office of Chief Parliamentary Counsel in providing a simpler and more accessible style, implementing the Attorney General's Ministerial Statement of 7 May 1985, *Plain English Legislation.*[5] Its first Section is a prime example:

> ***Planning and Environment Act 1987 – Section 1***
>
> *The purpose of this Act is to establish a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians.*

The second reading speech introducing the Bill for the 1987 Act is informative. The then Minister for Planning and Environment argued that planning legislation should:

- *recognise that planning is an activity involving elected officials, appointed advisers, interested members of the public, individually or in groups, and professional practitioners;*

[3] The result of the *Transport Infrastructure and Planning Legislation Amendment Act 2024*
[4] MAV President, by media release, 20 October 2023
[5] p2 and p6, Law Reform Commission of Victoria, 2017. *Plain English and the Law: the 1987 report republished*.

- *provide for continual strategic planning, attempting to clarify our view of the future;*
- *ensure that values can be made explicit, through articulation of objectives and policies;*
- *provide an ability to set rules about the use and development of land;*
- *establish a framework for making, amending, administering and enforcing those rules by appropriate levels of government;*
- *provide a framework for the resolution of disputes about the way land should be used and developed; and*
- *provide for compensation for those whose land is or will be required for a public purpose.*[6]

These legislative purposes have been quoted in many formal reviews of the planning system since 1987 and remain relevant today. If the Act is to be rewritten, as the Victorian Government has stated it intends, questions about the extent to which the Act has lived up to its original promise, and reasons for why it may have fallen short, are foundational considerations.

4.2 The planning system

The Act is 'enabling' legislation, refraining from precisely defining how planning should be done or the rules that should apply to land use and development. Such detail is dealt with in subordinate legislation.

The present planning system has been built on the enabling provisions of the Act, but has evolved through a series of amendments to the Act and subordinate legislation. The most significant system change was the 1996 introduction of new format planning schemes within a structure determined by the VPP. Implementation of the new format planning schemes was mostly concluded by 1999, and completed by 2001.

The objectives of the VPP and new format planning scheme reforms were to:

- Facilitate development;
- Reduce local variation;
- Improve strategic planning;
- Reduce the size and complexity of planning schemes;
- Provide greater certainty; and
- Make schemes more efficient and less costly to administer.

These objectives from 1996 are almost identical to those being proposed by the DTP in 2025 (see section 5.3).

The process of translation by councils of old municipal planning schemes into new format planning schemes consistent with the VPP increased the average length of planning schemes from 127 pages to 524 pages, more than four times their previous length. This is despite the government's reform objective 'to reduce the size' of planning schemes.[7]

The original VPP, introduced 9 January 1997 through amendment V0, allowed for 25 zones, 19 overlays and 30 particular provisions.[8] As at 1 April 2025, the VPP now allows for 33 zones, 29 overlays and 122 particular provisions (counting clauses 54, 55, 57 and 58 as one provision each). Every addition was approved by the Planning Minister of the day.

[6] p492, Legislative Council Hansard, 24 March 1987
[7] p54 in Buxton, Michael, Goodman, Robin and Budge, Trevor, 2005. 'Planning and deregulation' in *Australian Planner*, 42:2, pp52-58.
[8] Victoria Planning Provisions historical records, Version: V0 – Thursday 9 January 1997.

While the 1987 Act enables wide community involvement and politically vested powers, the 1996 reforms introduced through the VPP created a framework of policies and controls that rejected rigidity, instead preferring provisions couched in discretionary terms. The principal Act and the 1996 version of the VPP, taken together, form the basis of one of the prominent characteristics of Victoria's planning system: a broad range of permissible outcomes and a heavy reliance on appeal mechanisms.

Changes to the VPP since 2001 can be seen, in part, as a reaction to the 1996 reforms. The reassertion of 'clarity' is a common justification for new approval pathways that remove the possibility of appeal, change the decision-maker or otherwise diminish dispute. However, these changes have also greatly expanded the size of the VPP and planning schemes and led to a proliferation of mechanisms that exempt applications from standard provisions in the principal Act.

Section 6(2) of the Act lists the permissible exemptions that planning schemes may apply. In order of their introduction into the Act, they are:

- (ka), allowing classes or land, use or development to be exempt from requiring planning permission or consent (1989);
- (kc), allowing classes of applications to be exempt from giving notice (1993);
- (kd), allowing classes of applications that attract objections to be exempt from the possibility of appeal by a third party (1993);
- (kca), stopping decision makers from requesting more information of applicants in respect of classes of applications for permits (2012);
- (kcb) and (kda), allowing classes of applications for permits to be exempt from being assessed under Section 60 of the Act, which ordinarily requires decision-makers to consider not only the planning scheme but also the objectives of planning in Victoria, objections to the application, referral authority responses, significant environmental effects, significant social and economic effects, and certain other policy (2012).

The availability of these exemptions is necessary. The planning system cannot possibly handle the volume of decisions today that were imagined in 1987 *without* a reasonable level of exemption from standard provisions for certain classes of application. All planners accept that there are classes of application that are generally unobjectionable and ought not be the subject of unreasonable delay.

When exemptions from standard provisions in the principal Act become the norm and not the exception, however, the principal Act suffers a loss of relevance and public support. With most homes forecast in the *Plan for Victoria's* statewide settlement strategy (i.e. 70 per cent of new homes are to be built inside established urban areas) likely to be facilitated through exempting VPP controls from certain Section 60 requirements, the relevance of the principal Act is brought into question.

The planning system is much more than the principal Act. It is the Act *extended, modified and clarified* by the VPP. It is also the planning schemes and other subordinate legislation, related relevant primary legislation (often triggered by clauses in the VPP, e.g. the *Subdivision Act 1988*), Ministerial Directions, policies and practices. It is upheld by hundreds of decision-makers and thousands of practitioners and it has coverage of all land in the State, with the exception of Commonwealth owned land.

Any review of the planning system is therefore a far larger undertaking than a review of the principal Act alone. It is inevitable, however, that reviewing the Act will invite a system-wide review, because changes to the heads of power are likely to have far-reaching consequences for the expression of regulatory language in subordinate legislation, as well as for accrued property rights and principles of fairness.

4.3 State and local government

Victoria's planning system, like the systems in other states, divides responsibilities between state and local government. While the state maintains responsibility for the design and oversight of the planning system, most administration of the system occurs at the local government level.

This is what the Act intends, with the Minister for Planning retaining ultimate control of the planning system (through holding final approval power over all content in all planning schemes) and with municipal councils exercising planning authority, responsible authority and referral authority responsibilities within planning scheme frameworks based on municipal boundaries.

This arrangement has its advantages ("the opportunity for coordinated high-level policy setting and regulatory consistency throughout the state") but it also has its disadvantages ("those who become most intimately familiar with the operation of the system, local government planners, have limited ability to fix problems they encounter").[9]

Councils are by far the largest employer of planners in Australia.[10] Victorian councils and their planners are the most prolific users of the Act, and therefore the level of government most exposed to planning system changes.

Local government planners must grapple with any planning system structural dysfunction. They must understand and apply VPP changes quickly, in a time when exposure drafts and well-drafted transitional arrangements are increasingly rare. They are the first to inform members of the public about how planning decisions are made and how new planning approvals pathways will or will not alter their rights and interests. They are the most accessible and visible practitioners in the planning system, and therefore inevitably exposed to more vitriol than system designers and consultants.

The coordination between planning system designers in state government and planning system administrators in local government has steadily deteriorated in the 24 years since the introduction of the new format planning schemes. There have only been a couple of exceptions to this trend. Submissions by MAV on past reviews of the planning system have charted this course, but so too has the Auditor General. In *Managing Victoria's Planning System for Land Use and Development,*[11] published in 2017, the Auditor General noted the absence of any state-wide system performance monitoring and feedback framework, and the non-implementation of its 2008 recommendation to establish one. In 2025 there is still no such framework.

This absence of meaningful and continuous connection between planning system central designers and local administrators has contributed to the proliferation of new parent controls (see section 4.2), with too many of these new controls increasing, not reducing, administrative complexity. It is frustrating that the finger is pointed at councils for being the major contributor to system complexity. This is given that every new parent control introduced since 1999, whether zone, overlay or particular provision, was an addition by the Minister for Planning, and given all new local schedules to those controls were also authorised and approved by the Minister.

[9] See p294 in Rowley, Stephen, 2023. *The Victorian planning system: practice, problems and prospects*. 2nd edition. The Federation Press Annandale, NSW
[10] Fallding, J and Williams, D, 2023. State of the Profession Report, prepared for Planning Institute of Australia.
[11] *Managing Victoria's Planning System for Land Use and Development*, March 2017.

Important events that have led to the current nadir in state-local coordination also include the abandonment by the State Government of the Victorian State-Local Government Agreement[12] after November 2014. That agreement included an express commitment that:

> *Where the Victorian Government intends for local government to administer or enforce new primary legislation, or new or revised regulation, the relevant lead department shall, subject to exceptional circumstances, consult with local government in accordance with the Victorian Guide to Regulation. In doing so, the relevant department shall consider the impacts of the regulation on local governments, including any cost and resource impacts on local governments of administering the regulation.*

Another event is the introduction of the Housing Statement on 20 September 2023 with planning system changes gazetted the same day. Those changes, made without prior notice or the ability for local government planners to correct errors or suggest improvements, included the transferral of some decision-making powers from councils to the Minister. A consequence has been that councils are still required to provide technical advice and permit conditions and also assist the department with notice given councils hold accurate property data, but without collecting any fees. While such changes to the VPP are technically possible, they defeat the purposes of the principal Act, and their cumulative effect has been to undermine local expertise and the integrity of the underlying structure of the VPP (see Section 5.7).

The MAV has attempted to redress the dislocation of planning system designers from planning system administrators. At the first opportunity following the release of the Housing Statement, the MAV State Council resolved:

> *To commit to good faith engagement with the State Government to work in genuine partnership on further planning reforms, including and especially a thorough review of the* Planning and Environment Act 1987 *and the development of Plan Victoria and Activity Centres, in the interests of ensuring a system that works to provide supply and affordability while retaining integrity, accountability, transparency and the ability for local communities to add value to community, regional, metropolitan and State-wide plans and development;*
>
> *To formally request that the Planning Minister enter into a Memorandum of Understanding with the MAV that establishes this partnership and enables genuine input and improvement from the Local Government sector to any and all fundamental planning system reforms.*[13]

The MAV implemented the resolution by extending a formal proposal to the Minister for Planning. While the terms of a compact between the Minister and the MAV President was eventually agreed in principle nearly a year later in September 2024, it was not signed, and the parties have not met under it.

Since September 2023, the Plan for Victoria has been completed and announced, the locations of the Activity Centres have been chosen, and the Planning and Environment Act review is well progressed. The State-Local partnership of the type proposed by the MAV in September 2023 is no longer possible.

In March 2024, following the Victorian Government's establishment of an interdepartmental Taskforce to implement the Operation Sandon recommendations (see section 5.2), the MAV also requested membership of that Taskforce. This too was declined.

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[12] Victorian State-Local Government agreement
[13] pp4-5, MAV State Council resolutions, 13 October 2023

We are disappointed that the Victorian Government's recent approaches to reform have avoided and rejected meaningful consultation or partnership with the planning system's primary administrators in local government, or the MAV as Victorian councils' peak body.

We maintain that it is not possible to pursue far-reaching reforms to the planning system and have them succeed without testing proposals with local government planners first.

The exclusion of local government is not only a Victorian problem. The Australian Local Government Association and Equity Economics recently found[14] that the omission of any mention of local government in The National Agreement on Social Housing and Homelessness, or recognition by the Commonwealth and States as an important delivery partner in meeting housing targets, has caused regional variation and community- and place-based needs to be misunderstood. This in turn has led to inefficiency, despite stated aims to make planning systems more efficient and effective.

4.4 Social licence

The objectives of the planning framework established by the Act are set out in Section 4, and include:

- (h) to establish a clear procedure for amending planning schemes, **with appropriate public participation** in decision making;
- (i) to ensure that **those affected by proposals** for the use, development or protection of land or changes in planning policy or requirements **receive appropriate notice**;
- (j) to provide an **accessible process for just and timely review of decisions** without unnecessary formality …

The ability for the Minister to exempt themself from the notice and exhibition requirements of planning scheme amendments that they prepare has existed since 1987. Their ability to exempt permit applications from notice and review were introduced in 1993. Over the years, the use of exemptions has increased. Today, the patchwork approach to third party notice and review is more complicated than it has ever been. It will become more complicated again if recently canvassed reform options are pursued without a holistic review of the planning system (see sections 5.3, 12, 13 and 14).

While the ability to make exemptions is necessary and while development costs and uncertainty associated with delays caused by appeals to the tribunal are a real problem, the value of the underlying objectives of the planning framework must not be forgotten. The political value of a planning system that empowers community members to participate in strategic planning exercises that clarify our collective view of the future should not be underestimated.

There is a question of scale here. Just as a state-wide plan for Victoria cannot articulate the future of regions, neighbourhoods and streets, public participation on a state-wide plan cannot be a proxy for public participation in regional and local planning. The ability to plan at the scale of communities of interest has been, and could again be, one of the greatest strengths of the Victorian planning system.

With third party rights on individual planning applications frequently exempt, and with changes to the VPP frequently made without public consultation, it is regional, municipal and local strategic planning that maintains the social licence of the planning system today.

[14] *Addressing the Housing Crisis: Unlocking Local Government's Contribution*, August 2024.

Further changes to the planning system that limit public participation, or limit local planning authorities from balancing statewide objectives, environmental constraints and community ownership (e.g. switching off planning controls and policies for local opportunities and policy imperatives), will likely remove the remnant potential to achieve social licence altogether.

A planning system that empowers landowners, broader communities and municipal planning authorities to meaningfully shape their own futures will achieve democratic legitimacy and the social licence necessary to achieve transformational change. A planning system that prevents these opportunities will not.

4.5 Past reviews of the planning system

The planning system was overhauled in 1996, with the VPP and new format planning schemes introduced by 1999 with implementation complete by 2001. The objectives of that reform are set out in section 4.2.

The reviews and reports that informed the structure of the VPP disclose why certain system design choices were made. The 1997 *Report of the Advisory Committee on the Victoria Planning Provisions (VPPs)*[15] found that "[t]he use of schedules is one of the most important characteristics of the VPPs. It is by these means that planning schemes will be tailored to identify and respond to the local characteristics of municipalities. They will work together with the Local Planning Policy Framework as the lynch pins of day to day decision-making."

There have been 13 major reviews of the planning system in the 24 years since 2001:

1. ***Using and Interpreting Local Policy***, a report by a Minister-appointed reference group on decision-making processes (September 2002);
2. ***Better Decisions Faster*** (August 2003);
3. ***Cutting Red Tape in Planning*** (August 2006);
4. ***Making Local Policy Stronger*** (2007);
5. ***Melbourne 2030: Audit Expert Group Report*** (March 2008) and the Government's response, ***Planning for All of Melbourne***;
6. ***Victoria's Planning Framework for Land Use and Development***, a report by the Auditor-General (May 2008);
7. ***Modernising Victoria's Planning Act*** (2009);
8. The initial report of the Victorian Planning System Ministerial Advisory Committee (May 2012), usually referred to as the *'**Underwood Review**'*;
9. ***Managing Victoria's Planning System for Land Use and Development***, a report by the Auditor-General (March 2017);
10. *Reforming the Victoria Planning Provisions* (October 2017), which facilitated the '**Smart Planning**' reform program of 2016-2021;
11. ***Turning Best Practice into Common Practice***, by Better Regulation Victoria (Discussion paper 2019; final report November 2021), sometimes referred to as the 'Red-Tape Commissioner's review';
12. The interim report of the ***Inquiry into the Protections Within the Victorian Planning Framework*** by the Environment and Planning Committee of the Legislative Council (August 2022); and
13. The ***Operation Sandon Special Report***, a report by IBAC (July 2023), and the Government's response (March 2024), discussed in section 5.2 of this submission.

Just as the stated objective of the VPP reforms of 1996-2001 was to reduce complexity, provide certainty and improve efficiency, the explicit or implicit objective of nine out of 13

[15] *Report of the Advisory Committee on the Victoria Planning Provisions*, August 1997.

reviews since has been to do the same. Overwhelmingly, these reviews have concentrated on urban planning control complexities, with little consideration of rural areas.

The current 'review and rewrite' commissioned by the Housing Statement in September 2023 is the latest in this tradition but is notable for its absence of any public report first setting out the overarching purposes and strategic directions of the review. There is no indication that the history of planning system reform in Victoria, or the consistent failure to properly identify the causes of complexity before pursuing remedies, is being adequately considered in this latest 'review and rewrite'.

The four most recent reviews, all within the last four years, have not been completed:

10. The **Smart Planning** reform of 2016-21 was to involve three phases: 'Improve', 'Reform' and 'Transform'. The 'Transform' phase was abandoned. The *Reforming the Victoria Planning Provisions* report underpinning the Smart Planning package of reforms identified system complexity as a problem but was not clear about the causes of that complexity.[16] Criticism of Smart Planning included that, while it started with logical 'quick wins', it proceeded without a coherent overarching strategy.[17] Proposals to introduce or upgrade digital platforms were mostly implemented, however, facilitating significant efficiency and access improvements in planning administration including at the local government level.
11. The ***Turning Best Practice into Common Practice*** report was implemented, in part, by two amending Acts of Parliament: the *Planning and Environment Amendment Act 2021* and the *Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2024.* While the latter amending Act has received Royal Assent, it will not commence until 25 November 2025 (or earlier on a day to be proclaimed). It is discussed at section 5.7 of this submission. Beyond these two amending Acts, some recommendations of the *Turning Best Practice into Common Practice* report are still outstanding, particularly those that relate to performance standards for state government decisions.
12. The ***Inquiry into the Protections Within the Victorian Planning Framework*** interim report included one recommendation, that the next (current) Parliament refer a broad inquiry into the Victorian planning framework to the Legislative Council Environment and Planning Committee. This was not taken up, but events have overtaken it (i.e. the Government has announced its own 'review and rewrite').
13. The ***Operation Sandon Special Report*** recommendations, while generally supported by Government, are yet to be incorporated into any program to review and rewrite the act, as discussed at section 5.2 of this submission. These recommendations address the integrity of the planning system, which cannot be separated from questions of planning system efficiency.

Conducting another system-wide review while past reviews are yet to be fully implemented invites complexity and the repetition of mistakes. Any comprehensive review and rewrite of the Act and planning system should first consider the success or failure of past reviews, the reasons for success or failure, and what can be learned as a result.

If this does not occur, and the Victorian Government proceeds with a restructuring of the VPP with a view to removing a foundational element of the Victorian planning system (the ability to tailor policy and controls to meet local and regional environmental demands) without first clearly understanding and defining the problem to be solved, the 'solution' will fail.

[16] *Reforming the Victoria Planning Provisions, A discussion paper*, October 2017.
[17] p287 in Rowley, Stephen, 2023. *The Victorian planning system : practice, problems and prospects*. 2nd edition. The Federation Press Annandale, NSW

It has not been possible in the time available to conduct a review of the literature in relation to the implementation of these past reviews, though a notable analysis of the reviews, considered together, has been published by Dr Stephen Rowley.[18] He argues that:

> *There is little reflection [by Government] as to why so many similar initiatives across two decades of reform have been ineffective or even counter-productive; or what this may suggest about the prevailing wisdom about how to fix the system.*[19]

The Auditor General's 2017 findings may provide the most succinct analysis of Victoria's planning system reform inertia:

> *Past reforms have had little impact on fixing other systemic problems impeding the effectiveness, efficiency and economy of planning schemes. As a result, many of the issues prevalent before the 1996 overhaul of the planning system have re-emerged.*
>
> *These include:*
> - *vague and competing state planning policy objectives and strategies, with limited guidance for their implementation, which reduce the clarity of the planning system's direction in meeting state planning objectives*
> - *a lack of specific guidance to address key planning challenges, such as social and affordable housing, climate change and environmentally sustainable development*
> - *an overly complex system of planning controls in local planning schemes—councils add and amend policies and controls to try to provide clarity and certainty to their schemes in the absence of clear guidance at a state level*
> - *[The Department's] and councils' performance measurement frameworks being unable to measure whether the objectives of the Act or state planning policies are being achieved*
> - *lengthy delays in the processing of planning proposals, leading to set time frames not being met and unnecessary costs for applicants.*
>
> *These systemic weaknesses exist because of the poor uptake and implementation of review recommendations.*
> *…*
> *As a result, the planning system is difficult to navigate and implement, and it places an unnecessary burden on local government, [the Department] and applicants to administer and use.*[20]

These findings are manifestly relevant today. Particularly notable is the lack of meaningful progress since 2017 on "specific guidance to address key planning challenges". In the absence of state-wide policy and control on affordable housing, climate change and environmentally sustainable development, councils have pursued policy and control in local planning schemes at tremendous cost and mostly without success. The housing and climate crises remain inadequately addressed by the planning system. We have much more to say about these key planning challenges in Sections 7 to 9.

The MAV considers that there are ten mistakes that have been made in the implementation (or non-implementation) of past reviews that are likely to be repeated in the Government's

[18] ibid, pp281-298.
[19] ibid, p289
[20] *Managing Victoria's Planning System for Land Use and Development*, March 2017.

current reform program. All can be avoided if they are first acknowledged, and if the reform program is redesigned to address them.

The ten common mistakes of Victorian planning system reform attempts

1. Commencing reform implementation before clearly identifying the problem;
2. Commencing reform implementation before setting the objectives and strategy of the reform program;
3. Excluding local government from questions of system design;
4. Pursuing 'efficiency' in ways that reduce transparency or increase administrative burden, creating new types of inefficiencies;
5. Conflating 'certainty' with 'speed' or 'approval';
6. Failing to adopt a strategy for precision in regulatory expression;
7. Being overly preoccupied with the pursuit of 'streamlining' decision pathways at the expense of considering the quality of outcomes;
8. Failing to consider the effect on the Victorian planning objectives, or the integrity and accessibility of the underlying structure of the VPP, when introducing new controls that bypass that structure;
9. Overlooking those parts of the planning system that perform well; and
10. Failing to establish continuous review and improvement mechanisms.

The next section will consider what we know about the Victorian Government's current reform program.

5 What we know about the Victorian Government's reform program

5.1 The original scope of the review

The origin of the proposal to review and rewrite the Planning and Environment Act is found in Victoria's Housing Statement, released on 20 September 2023:

> *We'll look to establish and clarify timeframes for decisions, as well as looking at the roles and responsibilities of everyone involved in our planning system – including councils, the Minister for Planning, the Victorian Planning Authority and the Department of Transport and Planning.*[21]

Since September 2023, the MAV and other bodies with a direct interest in the structure and operation of the planning system have sought to understand the scope of this review, and what is meant by a "rewrite."

In August 2024, Department of Transport and Planning (DTP) officials advised staff within councils that a series of issues papers were being developed for release in September via Engage Victoria. While this did not eventuate, in September 2024, the Housing Statement one year report card implied that a "full review" was still underway.[22]

In November 2024, the Hon Harriet Shing MLC advised the Legislative Council that the review of the Act would be broad and comprehensive:

> *The review of the Planning and Environment Act is, as you know, one which is necessarily of a very, very broad remit. The Act itself contains a number of frameworks. It is 30 years old, so it is no longer fit for purpose, and one of the things that we know we need to do is review that entire framework for the purpose of a more contemporary application of systems to the way in which those matters are addressed.*[23]

From September 2023 until February 2025, the MAV, like other stakeholders, assumed that the Act review and rewrite would be a *complete* review and rewrite, resulting in a new principal Act to replace the 1987 Act.

The MAV welcomed the proposal to review and rewrite the Act (see section 4.1). The proposal's context, the Housing Statement released amid a housing crisis, implied that a primary objective of the review and rewrite was to ensure that the planning system is capable of meeting demand for new homes. We have always supported this objective and continue to do so. Provided the review and rewrite of the Act is comprehensive and considers the integrated relationship of all the frameworks enabled by the principal Act so that unintended consequences of system reform can be avoided, the housing supply objective should be made explicit.

Local government supports the original scope of the review: a comprehensive review and rewrite the *Planning and Environment Act 1987* to build a modern, fit-for-purpose planning system.

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[21] P Victoria's Housing Statement, 20 September 2023
[22] p3, Victoria's Housing Statement Progress Update, September 2024
[23] p4453 and p4456, Legislative Council Hansard, 14 November 2024

Recommendation 1

That the Government maintain its commitment to review and rewrite the Planning and Environment Act 1987 and, by extension, the planning system, subject to the other recommendations in this submission. A comprehensive review is necessary if the planning system is to effectively facilitate the transformational change needed for Victoria to meet its housing, climate, environmental, economic and infrastructure challenges, while maintaining its social licence.

5.2 Operation Sandon

On 20 March 2024, the Victorian Government responded[24] to each of the recommendations made by IBAC in its Operation Sandon Special Report.[25]

In a media release accompanying the Government's response, the Victorian Government stated:

> *Many of IBAC's recommendations to reduce the risk of corruption in the planning system and make it more transparent and consistent will be implemented as part of a review into the Planning and Environment Act.*
>
> *This review was announced as part of the Housing Statement, the biggest shake-up to planning and housing in generations.*
>
> *… The Government will establish an interdepartmental Taskforce to facilitate cooperation across government and support the implementation of IBAC's recommendations. It will report back to the public within 18 months.*[26]

These statements made clear the Victorian Government's intention to include implementation of Operation Sandon recommendations in the project to review and rewrite the Act, and also implied that the interdepartmental Taskforce overseeing the implementation of those recommendations will report by 20 September 2025.

The Government accepted all the Operation Sandon recommendations (in whole or in part, in principle or in full). The recommendations that would require amendments to the Act are:

- Recommendation 3, to provide for transparency and accountability in authorising planning scheme amendments;
- Recommendation 4, to limit discretion at the adoption and approval stages of planning scheme amendments;
- Recommendation 6, to require decision-makers to record reasons for their decisions in relation to planning scheme amendments;
- Recommendation 7, to provide for mandatory disclosure of reportable donations;
- Recommendation 9, to clarify penalties so as to deter submitters from improperly influencing decision-makers; and
- Recommendation 11, to remove responsible authority powers from councillors and introduce determinative panels in their stead.

[24] Government response to IBAC's Operation Sandon Special Report, released 20 March 2024
[25] IBAC's Operation Sandon Special Report, released 27 July 2023
[26] Premier, Planning Minister and Local Government Minister, by media release, 20 March 2024

Some other recommendations make changes to the planning system outside the Act.

Recommendation 11, which would likely require the most significant structural changes to the Act, elicited this response from the Government:

> *The option to implement new decision-making models will be considered as part of the review and rewrite of the Planning and Environment Act 1987 that the government has committed to as part of its recently released Victoria's Housing Statement…*

The Taskforce is theoretically 12 months into its (up to) 18 month review, but local government has received no updates on its progress.

It is disappointing that, since the publication of the Operation Sandon report, the Victorian Government has introduced new types of planning approval pathways that move decisions away from predictable, accountable and transparent processes. These include new particular provisions at clauses 53.22 ('significant economic development') and 53.23 ('significant residential development with affordable housing'). While they may have important policy objectives, these pathways enable extraordinary discretion while centralising decision-making within the Planning Minister's office and Department and away from public scrutiny. These are practices warned against in the Operation Sandon report and which may have increased integrity risks in the planning system.[27]

Another example was announced[28] as recently as 6 April 2025: a new approval pathway for 'Great Design' townhouses and apartments between two and eight storeys. The new provision makes the Minister the responsible authority in place of the councils and allows the usual height and set back requirements to be varied. The new provisions also switch off third party appeal: final decisions will therefore be made out of public sight. The announcement ends the long-held notion that the Planning Minister's role in deciding individual permit applications is reserved for matters of 'state significance.'

The Operation Sandon Special Report is a serious matter and deserves a serious response. There are strong and mixed views from councils about some of its recommendations. The MAV has raised significant concerns about the consequences of recommendations not being implemented carefully. There is however widespread support across local government for the report's purpose: to improve the integrity, accountability and transparency of planning decisions in relation to all decision-makers.

The MAV submits that any program to review and rewrite the Act must aim to create a planning system that provides integrity, accountability and transparency.

We seek an outright ban on all donations from developers (and related interests) to decision-makers throughout the planning system.[29]

Any review and rewrite of only those Parts of the Act that the Victorian Government is initially focusing on (see section 5.3) that comes before the report of the interdepartmental Taskforce is published risks leaving the purpose of the Operation Sandon report unfulfilled. This in turn risks a piecemeal approach to reform, with the constant amending and re-amending of the same Parts of the 1987 Act rather than consideration of the planning system as a whole.

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[27] p28, *Shaping metropolitan Melbourne: A discussion paper for the Municipal Association of Victoria*, SGS Economics and Planning

[28] Planning Minister, by media release, 6 April 2025

[29] MAV State Council resolution, May 2021: "That, in the wake of the [IBAC] investigations, the [MAV] calls upon the State Government to: 1. Ban all political gambling industry and developer donations, including donations from town planning, property developer, developer and gambling industry consultants and lobbyists; 2. Reduce the maximum allowable amount for electoral donations."

These Parts of the Act will *also* be amended by the *Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2024* when it commences on 25 November 2025 (or earlier on a date to be proclaimed). The potential for legislative confusion is significant.

Recommendation 2

That the reform program adopt as an objective the design of a planning system that provides integrity, accountability and transparency in decision-making in relation to all decision-makers.

5.3 A revised scope for the review

On 24 February 2025, the Department of Transport and Planning (DTP) held workshops with local government planners to provide information about the focus of the review. While the title of the workshops was "Planning and Environment Act review and rewrite" (that is, a rewrite of the Act was still envisaged), the content of the workshops focused only on a partial review.

For the purposes of this submission, we refer to this partial review as the 'initial review.'

At these workshops and in answers to questions from local government planners, DTP advised that:

1. The implementation of the Government's responses to the Operation Sandon recommendations would not be part of the initial review (other than perhaps a partial implementation of recommendations relating to how planning scheme amendments must be handled);
2. The focus of the initial review of the Act would only be on planning permit and planning scheme amendment processes (i.e. Parts 1, 1A, 2, 3, 4 and 8 of the Act);
3. The initial review would encompass a restructuring of the VPP (and, by extension, all planning schemes) *as well as* some Parts of the principal Act; and
4. This initial review would conclude within 2025.

At most, 105 of the principal Act's 630 discrete Sections – plus the VPP – are affected by this 'initial review'. No advice was provided about how and when the remainder of the Act would be reviewed and rewritten.

This was the first time that local government was informed that the review would include the restructuring of the VPP. This part of the reform program appears to be far more significant than the proposed amendments to the principal Act.

A complete response to the 'reform options' proposed by DTP on 24 February 2025 is found at sections 12 to 14 of this submission.

5.4 Plan for Victoria

Plan for Victoria was released on 28 February 2025,[30] later that same week.

The Plan proposed that:

> *We'll explore simpler rules for affordable housing as part of the review of the Planning and Environment Act 1987 so the Minister for Planning and councils can obtain a fair and equitable affordable housing contribution as part of a new development.*

The Plan's Action 9 ("Streamline community infrastructure developer contributions") also contains directions to amend the *Planning and Environment Act 1987*. These two Actions account for another (up to) 170 of the Act's 630 Sections, in addition to the 105 sections identified in the revised scope (see section 4.3).

The MAV strongly supports the inclusion of affordable housing mechanisms and reformed infrastructure charging in the scope of the review and rewrite of the Act. (These are discussed further in Sections 8 and 10 of this submission.)

Neither were included within the scope of the 'initial review'.

Action 10 of *Plan for Victoria* provided that:

> *In the longer term, we'll continue to partner with Traditional Owners to understand, recognise and embed Traditional Owners' rights, interests and aspirations in Victoria's planning system, including through the review of the Planning and Environment Act 1987.*

This was the first public indication that the 'review of the Act' may be a 'longer term' proposition.

Many of the Plan for Victoria's Actions (at least Actions 1, 2, 3, 5, 6, 7, 10, 12, 13, 17, 18, 20, 21 and 22) require changes to the VPP. There is no indication if these changes will be made in 2025 or later. It will not be possible to make all changes within 2025.

The Plan also implies planning system changes to implement the housing capacity targets. These too will require changes to the VPP. These changes seem to preclude the implementation of Recommendation 11 of the Operation Sandon report (to remove responsible authority powers from councillors and introduce determinative panels in their stead), because the Plan only foreshadows limitations on councils' planning authority duties, and not their responsible authority duties – but this has not been made explicit.

In summary, the *Plan for Victoria* and what it implied about the scope of the program to review and rewrite the Act was significantly different to the 'initial review' proposed by DTP earlier that week. Both clearly fall short of the original scope announced on 20 September 2023, a comprehensive review and rewrite of the Act.

5.5 Amendments to the Act since September 2023

Since September 2023, four Acts of Parliament that amend or will amend the *Planning and Environment Act 1987* have received Royal Assent. They are:

[30] Plan for Victoria, released 28 February 2024.

Table 1: Acts amending the *Planning and Environment Act 1987* after September 2023

Amending Act	How the Amending Act changes the Principal Act *(Planning and Environment Act 1987)*
State Taxation Amendment Act 2024 Assent Date: 4.6.24 Commencement Date*: 5.6.24	Modest amendments to metropolitan planning levy (ss96T-96V) and growth areas infrastructure contributions (S201RF) provisions.
Climate Change and Energy Legislation Amendment (Renewable Energy and Storage Targets) Act 2024 Assent Date: 26.3.24 Commencement Date*: 26.3.25	New definition added ("emissions reductions target"); new objective for planning in Victoria added ("to provide for explicit consideration of the policies and obligations of the State relating to climate change, including but not limited to greenhouse gas emissions reduction targets and the need to increase resilience to climate change, when decisions are made about the use and development of land") and new requirements on decision-makers to have regard to climate change.
Transport Infrastructure and Planning Legislation Amendment Act 2024 Assent Date: 26.11.24 Commencement Date*: 10.9.25 or on an earlier day to be proclaimed.	New Part 9AB inserted ("Precinct project development") to provide for the delivery of precinct projects using the project powers in the *Major Transport Projects Facilitation Act 2009*. **The current Authorised Version of the principal Act does not yet incorporate these amendments.**
Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2024 Assent Date: 18.3.25 Commencement date*: 25.11.25 or on an earlier day to be proclaimed. *These amending Acts amend multiple principal Acts. The commencement date provided here is for amendments to the *Planning and Environment Act 1987*.	Parts of the Act relating to planning scheme amendments, permit application processes, planning panels, metropolitan planning levy (MPL), VCAT and compensation amended, to implement various Better Regulation recommendations and Housing Statement commitments, providing: • New 'low impact amendment' pathways; • Formalised proponent-led amendments provisions; • Options to re-enliven abandoned amendments; • Options to void incomplete permit applications; • Redefinition of 'material detriment'; • Longer default permit expiry provisions; • More flexibility for Ministerial call-ins; • Ability to dismiss irrelevant panel submissions; • Deadlines for release of panel reports; • Allowing panel hearings 'on the papers'; • Ability to group parties and dismiss meritless claims at VCAT; • Exemptions from paying the MPL; and • That interest be payable on compensation. **The current Authorised Version of the principal Act does not yet incorporate these amendments.**

The commencement dates for the relevant part of the latter two Acts are 10 September 2025 and 25 November 2025, or an earlier day to be proclaimed. The last Act, the *Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2024* (the CPLA Act) amends the same Parts of the principal Act that DTP is now focusing on in its 'initial review' (see section 5.3): planning scheme amendments and permit applications.

These amendments to the principal Act, especially those caused by the CPLA Act, will confound any review and rewrite of the Act – including any 'initial review' – that concludes in 2025.

5.6 How these five reform programs affect the Act

The original scope (see section 5.1), the matters being considered by the Operation Sandon interdepartmental Taskforce (see section 5.2), the 'initial review' (see section 5.3), the directions in Plan for Victoria (see section 5.4) and the upcoming amendments to the Act made by the *Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2024* (section 5.5) all affect different Parts of the Act.

Table 1 indicates which Parts of the Act (and subordinate legislation) are affected by each of these five programs.

Table 2: Parts of the *Planning and Environment Act 1987* affected by reform programs

Part of Act	Original scope of review 20.9.23	Sandon Taskforce established 20.3.2024	'Initial review' scope 24.2.25	Plan for Victoria actions 28.2.25	Act changes commencing on or before 25.11.25
Part 1	X		X	X	X
Part 1A	X		X		
Part 2 (planning schemes)	X	X	X		X
Part 3 (amendments)	X	X	X		X
Part 3AAA	X				
Part 3AA	X				
Part 3AAB	X				
Part 3AAC	X				
Part 3A	X				
Part 3AB	X			X	
Part 3B	X			X	
Part 3C	X				
Part 3D	X				
Part 4 (permits)	X	X	X		X
Part 4AA	X				
Part 4A	X				
Part 5 (compensation)	X				X
Part 6 (enforcement)	X				
Part 7 (advisory committees)	X				X
Part 8 (panels)	X	X	X		X
Part 9 (administration)	X				
Part 9A	X				
Part 9AB					X (insertion)
Part 9B	X			X	
Part 10 (regulations)	X				
Part 11	X				X
New Parts required		X		X	
Subordinate legislation Victoria Planning Provisions			X	X	

5.7 Amendments to the Victoria Planning Provisions since September 2023

Since the release of the Housing Statement on 20 September 2023, major structural changes to the planning system have been made through amendments to the VPP.

These structural changes have preceded the project to review and rewrite the Act. The cumulative effect of these piecemeal yet significant changes to the VPP must be understood if government is to make informed decisions about further major changes to the planning system.

Notable examples of VPP changes since the release of the Housing Statement are:

Table 3: The most significant VPP changes since 20 September 2023

Amend't	Description	Regulatory impact on local govt.	Local govt. consultation
VC242 20.09.23	New particular provisions to facilitate 'significant residential development' (inclusive of 10% affordable housing)[31] and 'significant economic development'. These allow development outside usual height, set back and garden area requirements, and make the Minister the decision-maker.	Councils still required to conduct an assessment in order to provide accurate technical advice and permit conditions, but do not collect the fee. Councils still required to prepare notice, because state does not always hold details of surrounding properties. Where outcome is cash-equivalent gift to Homes Vic, no affordable homes will be built on site but infrastructure to support denser-than-planned population will fall on rate-payers via local govt to deliver, and there is no requirement that Homes Vic uses cash to build social housing locally.	None.
VC243 29.11.23	Codify residential development standards, expanded the Future Homes project, remove permit requirements for single dwellings on lots of 300sqm or more, introduce VicSmart stream for single dwellings on lots less than 300sqm.	Moving dwellings to VicSmart is a significant departure from the pathway's original intent. Very fast assessment timeframes for small but complicated proposals risks procedural error. Design quality, covenants, or site vegetation no longer able to be improved through negotiation. No transitional provisions.	Some workshops on draft standards. No consultation on detail of provisions.
VC257 25.02.25	Introduces the Housing Choice and Transport Zone (HCTZ) and Built Form Overlay (BFO), intended mainly for Activity Centres.	Still being assessed by MAV. Zone and overlay yet to be applied to any precincts. The BFO requires local schedules to each contain a 'development framework'. How these will be developed has not been explained.	Draft controls provided to peak bodies and affected councils for comment.
VC274 28.02.25	Introduces the Precinct Zone (PRZ), intended for SRL precincts and other priority precincts.	Still being assessed by MAV. Zone yet to be applied to any precincts.	Draft controls provided to affected councils for comment.
VC267 06.03.25	New townhouse and low-rise code at clause 55, replacing the old ResCode two or more dwellings on a lot. Up to four storeys.	Still being assessed by MAV. Errors in transitional arrangements caused significant administrative inefficiency. Extinguishment of local policies and schedules has removed ability to meet local tree canopy and ESD objectives.	Some principles-based workshops. Draft controls not provided.
VC280 07.04.25	New 'Great Design Fast Track' particular provision at clause 53.25, an approval pathway for apartment and townhouse developments that exhibit 'high quality' design and higher sustainability ratings. Minister the decision-maker. Minister can waive usual height, set back and garden area requirements.	Councils will still need to assess proposals in order to provide accurate advice and permit conditions, and assist with notice, but will not collect fee. The provision casts serious doubt on local govt ESD planning and the state's ESD Roadmap. Making the Minister the responsible authority for individual sites that are not 'state significant' is novel; may invite forum-shopping and reduce transparency.	None.

[31] While described in clause 53.23 as a 10% affordable housing mechanism, the DTP website states that affordable housing can be contributed as 3% of dwellings gifted, or cash equivalent to 3% of the development cost to Homes Victoria, or 10% of dwellings sold at a 30% discount rate to a Registered Housing Agency, or similar. Minimum tenure requirement negotiable. The contribution rate can also be reduced under clause 53.23 (without the Minister's decision-making status being removed).

With very few exceptions, these changes:

- Are far-reaching (causing unintended consequence stemming from inadequate transitional arrangements),
- Were not meaningfully consulted on prior to their gazettal,
- Have created significant regulatory impacts on local government, and
- Are not being measured in terms of uptake, performance and effect.

These changes also give rise to the prospect that the 'review and rewrite' project will become a 'tidying up' of structural changes already made, rather than a comprehensive exercise that considers the performance of the planning system as a whole. This would not be a strategic approach.

VC267, which implements the *Townhouse and Low-Rise Code* is notable for its scope: it aims to facilitate a very significant proportion of the new homes envisaged by the housing settlement strategies of *Plan for Victoria*. It is also notable for the absence of any publicly released modelling, testing and justification, with the detailed provisions seen for the first time when the amendment was gazetted on 6 March 2025.

The novelty and complexity of the provisions in the new code, and the extent of exemptions from parent provisions in the VPP and principal Act, have already given rise to significant concerns about unintended consequences. These include the removal of landscaping objectives, incompatibility of the 10% tree canopy cover with the 30% target in Plan for Victoria, new incentives to clear a site of vegetation, the incompatibility of highly complicated provisions with fast deemed-to-comply verification, the 'switching off' of local ESD policies that are more ambitious than the code provides for, the 'switching off' of local policies and zone schedules that provide deep soil planting and urban forest targets, unnecessarily reducing front set backs, and the incompatibility of the code with the mandatory Garden Area requirement in some residential zones.[32,33,34]

Case study: Nillumbik Shire Council

Nillumbik's neighbourhood character is predominantly influenced by heavily vegetated areas including significant indigenous, native and non-native canopy and amenity trees. The Council's local neighbourhood character policy encourages retention of existing vegetation, especially large indigenous trees, and seeks to minimise the impacts on the landscape from erosion and excavation.

VC267 switched off this local policy and instead requires a 10% canopy cover - substantially less than the existing almost 40% canopy coverage of many developable lots.

The cost, time and diversion of labour involved in translating neighbourhood character policies to overlays, to re-apply vegetation retention provisions to land subject to the new deemed-to-comply provisions of clause 55, would be inordinate.

[32] Rowley, Stephen, 30 March 2025: 'What Does 10% Tree Canopy Cover Look Like?', blog post
[33] Aubrey, Sophie, 13 March 2025: 'Melbourne tree canopy goal 'impossible' without ripping out roads', *The Age*.
[34] City of Monash, 12 March 2025, published response to a media enquiry from *The Age*.

The Code also prevails over local variations to controls that implement Councils' housing and settlement strategies. Where those housing strategies incorporate neighbourhood character studies, the cost to implement them in planning schemes can be in the order of hundreds of thousands of dollars. They have been pursued to enable housing growth that considers proximity to infrastructure while taking account for environmental considerations and natural hazards, in accordance with Planning Practice Notes 90 and 91. Invariably, these planning scheme amendments were authorised by the Minister for Planning and drafted in collaboration with DTP officers, who have expressly supported placing local neighbourhood character variations in local schedules to zones. At no time were councils pursuing these amendments told that these local variations would become redundant, which is what occurred on 6 March 2025.

Local government agrees with the stated objective of the reforms: to support efficient subdivisions and townhouse approvals. Insofar as the planning framework limits these, it should be reviewed. However, we do not support compromising the integrity of the VPP and environmental outcomes in the pursuit of those objectives. It is possible to facilitate housing supply without those compromises, but the Townhouse and Low-Rise Code falls short. The MAV and CASBE are already sharing some data with the DTP to inform improvements to the code.

Like VC267, many of the significant VPP changes are still being understood and implemented by councils. The scale of these changes, and the inability to measure their success before pursuing another restructure of the VPP, will confound any review of the planning system that concludes in 2025.

Councils remain the usual first point of contact by members of the public seeking to understand how any planning proposal will be handled. The burden of explaining an increasingly complicated planning system to the public inevitably falls on local government planners.

5.8 Missing from the revised scope of the review

Not found in the 'initial review' are any of the other matters that are provided for in the principal Act (or other Acts linked to from the VPP) that we would expect to be part a comprehensive review.

Our concerns extend to the following frameworks:

- Reforming **infrastructure charges** including **Open Space Contributions** (with a view to achieving fairness and the ability to meet every community's infrastructure needs);
- Redefining **affordable housing** and creating a new head of power to require mandatory affordable housing contributions;
- Ensuring that **climate change, natural hazard and environmental risk** planning objectives are given effect in the planning system;
- Reforming provisions relating to offences and **enforcement**;
- Ensuring that the **compensation** provisions remain fair and fit for purpose;
- Reforming **fees** (with a view to achieving fairness and cost recovery);
- Limiting **speculation** (including removing incentives for land banking and permit flipping, especially where such activity inflates land value);
- Consolidating **special parts of the Act** that have been grafted on since 1987; and
- Updating the **Regulations** (especially the 2015 Regulations).

Sections 8 to 11 and 15 of this submission make high level recommendations about each of these.

We ask that the review of individual frameworks and provisions be done in a way that considers the cumulative effect of all changes on:

- The accessibility of the planning system to all of its users, potential users and the public generally;
- The social licence of the planning system; and
- The standards of good governance, transparency and accountability.

Section 6 of this submission considers how that might be done.

5.9 Conclusions and implications

We are concerned that the program to review and rewrite the Act, and by extension the planning system, has been designed (or is being pursued without design) in such a way that it will repeat 'the ten common mistakes of Victorian planning system reform attempts' identified in section 4.5 of this submission.

1. The problems with the planning system have not been clearly articulated;
2. The objectives and strategy for the reform program have not been established;
3. To date, local government has been excluded from questions of system design;
4. Reform options pursue 'efficiency' in ways that will reduce transparency and increase administrative burden;
5. 'Certainty' is being conflated with 'speed' and/or 'approval';
6. To date, a strategy for precision in regulatory expression has not been adopted;
7. Reform options pursue 'streamlining' of decision pathways at the expense of considering the quality of outcomes;
8. Reform options do not consider, and in some instances require decision-makers to disregard, the Victorian planning objectives; and propose new approval pathways that do not consider the impact on the underlying structure of the VPP;
9. Reform options overlook parts of the planning system that perform well (especially where local strategic planning enables community influence and trust); and
10. No continuous review and improvement mechanisms are proposed.

If the program to review and rewrite the Act abandons its objective of writing an entirely new consolidated principal Act within 2025, which we believe has effectively already occurred, three considerations arise.

The first consideration is whether it is feasible to complete only the 'initial review' (as defined at section 5.3) within 2025. The timing difficulties with the 'initial review' will likely confound stakeholders and the legislature while failing to generate public support (see section 5.6). If the 'initial review' is pursued alone, with all other parts of the planning system considered later, we think it is very likely that the mistakes identified above will be committed and the government will prevent itself from being able to consider the performance of the integrated parts of the planning system as a whole.

We therefore suggest that the 'initial review' is not feasible. We nevertheless respond to the three review themes proposed by DTP in sections 12, 13 and 14 of this submission.

Recommendation 3

That the reform program be rephased to ensure that the performance of the planning system as a set of integrated frameworks can be considered as a whole, with a view to consolidating duly considered reviews of each framework into one Bill to introduce a new principal Act to replace the 1987 Act, and to avoid piecemeal changes to the 1987 Act and planning system before then.

The second consideration, if the review is to be rephased, is how and when the principal Act will be amended.

The outcome that we wish to avoid is one where multiple principal Acts are in operation concurrently. This is what has happened to the Local Government Act, with two principal Acts in force since 2020 (the 1989 and 2020 Acts). The 1989 Act retains almost all of the provisions for rates and charges. These have not been consolidated and transferred to the 2020 Act because the rating review was never implemented. The review was completed five years ago. Departmental resources and priorities have moved on, and local government must work to two principal Acts for the foreseeable future. This has prevented the realisation of one of the purposes of creating a new consolidated Local Government Act in the first place: to provide ease of access to local government primary legislation in one document.

The complications for the Planning and Environment Act would be far more significant, for the reasons that have already been set out. The various frameworks enabled by the principal Act are intricately connected and these connections need to be understood together before the Act can be rewritten with confidence.

Recommendation 4

That the reform program avoid the situation of two principal Planning and Environment Acts being in operation concurrently other than to allow for a short transitionary period.

The third consideration, if the review is to be rephased, is how to design a reform program that will be comprehensive and successful. That is the subject of the next Section.

6 A better way

Local government proposes eight principles for planning system reform. Section 6 of this submission is broken into eight corresponding sub-sections.

6.1 Know the history

This submission has described a cycle of continuous reform programs that have failed to meet their stated objectives of reducing complexity, providing certainty and improving efficiency. If government does not understand this history and the reasons for the repetition of mistakes, it is destined to repeat them. A short account of this history is set out in sub-section 4.5 of this submission.

We recommend that a synthesis of this history and literature analysing the success and failures of past reform attempts be completed. This could be done as part of the Auditor General review proposed below.

6.2 Collect the evidence

If the Act is to be replaced and, by extension, the planning system is to be substantially reformed, we need to start with the facts about how the system is performing. Assertions that the system is inefficient are not enough. Evidence that shows the *causes of the inefficiency* must be established.

As the Victorian Auditor General's audits of the planning system were in 1999, 2008 and 2017, and as the government is embarking on a review and rewrite of the entire system, another VAGO audit is timely. The audit should:

- Consider the ways information is being managed across all parts of local and state government;
- Consider consents and permissions that are common but not well defined in the principal Act;
- Extend to the new approval pathways (where applications or permits are exempt from standard provisions in the principal Act, especially the new pathways facilitated by particular provisions at clauses 53.19 to 53.24);
- Consider the planning scheme amendment types and frequency of exemption from exhibition and submission processes, and who the planning authority is in each case. (See section 12.2 of this submission for all data that should be collected in relation to planning scheme amendments.)

If a VAGO review and report is not possible, the data should nevertheless be collected to inform a serious and comprehensive review of the system. Local government, as primary system administrators, stands ready to assist with a comprehensive data collection and reporting exercise.

A broader regulatory audit of the VPP that considers plan delivery and planning system efficiency would also yield important data. A regulatory audit should consider:

- Whether regulatory provisions reflect strategic intent;
- Whether provisions accord with regulatory best practice;
- Whether the types of provisions align with the complexity of matters;

- Whether processing and assessment of applications is aligned with the most appropriate decision-maker.[35]

Separately, a review of the case law and tribunal decisions will be necessary to identify where frequent interpretational disputes exist and consider how they might be remedied, or where major consequences still need to be resolved (e.g. *Myers v Southern Grampians Shire Council*, 2023).

We understand the DTP has stated they have done some of this work to inform the present review and rewrite. Unfortunately, the DTP has been unable or unwilling to share their regulatory audit with system stakeholders. The MAV understands that the DTP has not sought data from local government.

6.3 Assemble the right people

As discussed in section 4.3 of this submission, a major problem with the ongoing stewardship of the planning system is the disconnect between planning system designers in state government and the primary system administrators in local government.

A beginning-to-end planning reform steering committee that includes more than just system overseers in state government would provide a broader perspective, and be able to identify and offer solutions to problems more efficiently.

There are any number of ways to approach this. The steering committee could take the form of a Ministerial Advisory Committee, or an Advisory Council to the Department. Under any model, however, the objectives for the steering committee should be:

1. To include a critical number of planning system administrators with recent significant experience; and
2. To ensure that the committee meets regularly enough, and with a level of predictability and continuity, that allows it to generate collegiality, trust and productivity.

A Planning System Ministerial Advisory Committee model could, for example:

- Include 12 members:
    - 5 representatives of state government (1 political appointee of the Minister; 1 chair or appropriately senior member of Planning Panels Victoria; 3 DTP),
    - 5 representatives of local government (1 MAV; 4 planning system administrators from a representative sample of councils and balancing for skill, experience and region e.g. inner metro, outer metro or growth, peri-urban or regional, and small rural),
    - 2 representatives of the relevant planning professional peak bodies (1 PIA (Victoria), 1 VPELA).
- Be supported by DTP as Secretariat, in turn supported by MAV where local government sector-wide input requires facilitation.
- Develop the reform program (defining the problem, setting the objectives and charting a timeline and process for reviewing each framework) and, subject to the Minister's approval of that program, oversee its implementation.
- Coordinate the work of subsidiary committees that consider individual frameworks enabled by the Act (infrastructure charges, compensation, enforcement, fees and cost recovery, etc), those subsidiary committees to draw from subject matter experts

[35] See p33 of *Shaping metropolitan Melbourne: A discussion paper for the Municipal Association of Victoria*, SGS Economics and Planning

and representatives from state government, local government, industry and professional bodies.
- Regularly publish progress reports online, to give all planning practitioners, industry and community certainty about timelines for review and how component reviews fit together.
- Disband upon completion of all reviews and a consolidated report and recommendations for a new Act and related legislation.

6.4 Define the problem together

As discussed in section 4.5 of this submission, most reviews of the planning system have not first defined the problem. Consideration of the evidence (per section 6.2), by the right mix of people who will steer a reform program from beginning to end (per section 6.3), will generate a shared understanding of the problems that need to be solved.

The steering committee (however defined) should publish a synthesis of the evidence and an articulation of the problems to be solved. Unlike the 2012 Ministerial Advisory Committee 'Underwood Review' report, the 2019 discussion paper by Better Regulation Victoria, and the 2023 Operation Sandon Special Report by IBAC, most planning system reforms since 1999 have pursued solutions without attempting to clearly identify the problems that they seek to solve – and publishing them upfront.

In no cases have state and local government conferenced to seek shared understanding of the causes of the problems.

If state and local government were to partner on planning reform, a holistic perspective of the causes of the problems with the planning system may emerge. For example, while 'complexity' may be a generally agreed problem, views on the causes of the problem will tend to differ from the point of view of system designer compared to system administrator. The former may see the cause as an excessive number of local schedules, while the latter may see the cause as deficiencies in the parent provisions. A holistic view, possible only through a deliberative process where system designers and administrators can understand one another, might make important findings and proposals about the underlying strategy for regulatory expression of the VPP, and whether the purpose of strategic planning is to identify conflicts or to resolve them.

In the published synthesis and proposition about the problem, the steering committee should also set the objectives for the reform program.

6.5 Set the objectives

The objectives for the reform program should be set by the steering committee of system administrators and designers (see section 6.3) and recommended to the Minister for approval.

We suggest that the draft objectives of the reform program should include:

1. Those objectives adopted by DTP for the 'initial review', being to "facilitate the implementation of Plan for Victoria", "efficiency", "certainty" and "transparency and integrity";
2. To facilitate the changes necessary to meet housing, climate, environmental and infrastructure challenges;
3. To maintain social licence and democratic legitimacy in the planning system;

4. To create a strategy for regulatory expression that will enable the objectives listed above, and that will follow through to practice notes about scheme drafting;
5. To create a mechanism for continuous improvement and system coordination (see section 6.8);
6. To ensure that all of the frameworks enabled by the Act are reviewed, and then the planning system and Act reviewed together;
7. To result in a single Bill to introduce a new principal Act; and
8. To maintain clear public communication on progress and purpose throughout.

Performance indicators for each of the objectives should be agreed upfront.

6.6 Strategies for regulatory expression

In his book, Dr Stephen Rowley writes about 'Rethinking the Paradigm: Strategy-based Regulation.'[36] It provides one approach to establishing a strategy for regulatory expression:

A strategy-based regulation model

Rather than seeing the accumulation of strategy-based planning decisions at permit stage as the key means of implementation, the strategy-based regulation model prioritises resolution of strategic guidance, embodiment of strategy in fit-for-purpose regulatory provisions, and more targeted use of discretion through the permit process.

Key assumptions of this paradigm are:

- The regulatory planning system should proceed from clear statements of strategic vision.
- Strategy should resolve strategic dilemmas wherever possible, and communicate those resolutions as clearly as possible.
- The regulatory planning system should implement those strategic resolutions using regulatory best practice, with principle-based, performance-based and prescriptive provisions used in a fit-for-purpose manner.
- Regulatory intervention should be targeted and effective, to ensure regulatory burden (footprint) is justified by the public benefit achieved (impact).
- Discretion through the planning permit process remains important, but is not the favoured point of policy resolution. The ideal uses for discretion are situations where full codification of outcomes is not possible, to preserve flexibility for site-specific circumstances, and for applications raising novel questions.
- The planning system needs to be managed as a constructive partnership between state and local government. Both levels of government need to be empowered to initiate system improvements.

In seeking to influence Plan for Victoria, the MAV commissioned SGS Economics and Planning to write two discussion papers on metropolitan and rural and regional planning. These discussion papers considered planning system design and potential approaches to system streaming. The proposed framework[37] builds on Dr Rowley's framework for strategy-based regulation. We modify the framework further to account for what we know about the scope of the Victorian Government's review and rewrite of the Act and planning system:

[36] See pp289-290 in Rowley, Stephen, 2023. *The Victorian planning system : practice, problems and prospects*. 2nd edition. The Federation Press Annandale, NSW
[37] See pp34-35 of *Shaping metropolitan Melbourne: A discussion paper for the Municipal Association of Victoria*, SGS Economics and Planning

Best Practice Planning System Design

There is a need for a realignment of the planning system to provide more clarity in the management of the system and to ensure that responsibilities are vested with the most appropriate body at all levels of the system.

Alongside this, the provisions themselves need comprehensive review to ensure that planning schemes are providing clear guidance and proportionate assessment pathways.

The following diagram illustrates how some of these regulatory design principles can be aligned with appropriate governance arrangements in the development assessment system.

Alignment of responsibilities and system responses in the planning system

Complexity	Simple	Moderate; foreseeable but hard to codify	Strategically important and consequential, novel, complex
Policy design	Codify and remove from the system	Clear descriptions of intended outcomes (e.g. use, density and height)	Principle-based controls
Assessment type	(None; has been removed from system)	Primarily technical assessment	Policy interpretation and judgment required: may raise significant policy questions
Notification and review		Limited to directly impacted parties	Available to third parties (unless compelling case otherwise)
Assessment / recommendation		Council officers	Council officers
Decision-maker		Council officers	The elected responsible authority

This framework conceives of applications within a spectrum of increasing impact and risk, and associated assessment complexity. This can approximately be divided into three categories: low impact applications that raise few if any genuine planning issues; the common applications requiring assessment, but which raise known or foreseeable issues; and more strategically complex or novel applications. This seeks to embed the following principles of system design:

The system should be targeted to where it adds value
At the level of policy and scheme design, the system should aim to remove the simple applications from the system wherever possible, by better targeting the system to define acceptable outcomes and remove permit requirement.

The system should give clear answers to common dilemmas
Common applications are less likely to be removed from the system, but schemes should aim to give as much clarity about intended outcomes as possible, for example through detailed descriptive policy or form-based codes (a density measure such as Floor Area Ratio, a core element in all planning controls in NSW, could be considered).

The system should provide a principles-based framework for novel matters
For complex applications, there is less likely to be clear policy guidance and the principles-based guidance of the Planning Policy Framework becomes more important to guide first-principles strategically driven decisions. (The Victorian system is currently well-attuned to this kind of application.)

Assessment pathways should align with risk, importance, and complexity
Assessment pathways should follow from the above scheme settings. Simple applications ideally will not require assessment. Planning judgement will be required for the common applications, although this should primarily involve assessment against codes and guidance formalised in the scheme. The complex and novel applications require more first-principles policy judgement and strategic decision-making.

Notice and review rights are an important part of the system
Notice and review rights have long been embedded in the Victorian system and play an important role in maintaining the system's democratic accountability and integrity. These rights should not be removed or traded as part of fast-tracking exercises. Instead, the extent of third-party involvement should flow from the importance of the matter. The tribunal should be resourced to deal with any matters efficiently.

The decision-maker should align with the importance and impact of decisions
The choice of decision-maker should follow in a logical manner from this framework. Councils should remain central to processing of the applications, with the bulk of common applications processed at officer level. More significant applications can then be elevated to council decision-making. It is appropriate for the Minister to make decisions on matters of genuine state significance, with a genuine role for input and support from councils.

Elected decision-makers should always respond to independent and publicly available reasons
The Victorian Auditor-General has previously expressed concern about governance of Ministerial decision-making, particularly with regards to the reasons provided for decisions (as the Minister does not typically provide or respond to a publicly available assessment). Regardless of decision-maker, assessments and recommendations by professional planners should be published before or alongside decisions (as the case warrants), in the interests of applicant and decision-maker accountability.

This framework is materially different to that proposed by DTP in its 'initial review', though both rely on streaming application types by complexity. (We discuss the DTP proposal further in section 14 of this report.)

Artificial intelligence

Any strategy for regulatory expression should also consider the quickly emerging and potentially transformative role of artificial intelligence (AI), machine learning and automation in assisting planning applications and assessments.

Victoria's planning system is not currently designed for automation, making automation or AI interpretation difficult without introducing errors. However, councils are already experimenting with third party generative AI assistants where codified planning pathways are in place. The MAV understands that many councils are exploring AI & automated decision making in planning and other public service delivery.

The Act and the planning system it enables rely on authorised decision-makers to determine compliance and assess applications. It is inevitable that, where AI is used to assist in applications or assessments, questions of risk and liability will arise.

There may well be a useful and time-saving role for AI in planning applications and assessments, where codified pathways are simple, deal with uncontroversial matters, do not require planner discretion, and are not prone to interpretative error. These benefits will be maximised where relevant provisions are machine-readable. Any strategy for addressing the use and regulation, including monitoring and evaluation of outcomes, of AI in planning functions is one that should be developed by system designers and administrators in state and local governments working together.

Case study: MAVLab

The MAV and Greater Dandenong City Council are collaborating on the delivery of a Local Government Housing Innovation Program with the support of a grant from the Commonwealth Housing Support Program.

As part of this program, MAVLab is leading the Advancing AI Innovation in Local Government (AAII) project to build an evidence base for guidance and recommendations for interventions into the use and procurement of AI and automated decision-making tools for statutory planning in councils.

The report will be released soon after this sector submission is published.

6.7 Resource the program

The reform program cannot be anything other than a multi-year program. But it must have some consistency from beginning to end to ensure that an overarching strategy is followed, and those charged with overseeing it establish and maintain a strong working relationship.

The reform program therefore needs a multi-year resourcing commitment.

The MAV will play its part in coordinating and supporting local government within the reform program.

Recommendation 5

That the reform program be redesigned to allow for:
1. The collection of relevant data and evidence;
2. Start-to-end oversight by a collaborative body of state and local government system designers and administrators;
3. A shared understanding of the causes of problems in the planning system;
4. A shared agreement of reform objectives and performance measures;
5. A shared agreement on a strategy for regulatory expression; and
6. Strong public communication about the purposes and progress of the program.

6.8 Continually improve

The Auditor General in 2008 recommended:

> ***Measuring the performance of the state's planning framework***
> - *[The Department], in conjunction with stakeholders, should assume the lead role in developing a more comprehensive framework for measuring the performance of the state's planning system. The framework should include key performance indicators, targets and reporting arrangements for assessing:*
> - *the achievement of planning outcomes at the local and whole-of-state levels*
> - *the effectiveness and efficiency of key planning permit and planning scheme amendment processes, including the performance of councils and [the Department] in the administration of those processes*
> - *the administrative impact on councils arising from their compliance with statutory processes and the extent to which implemented reforms have achieved their objectives and/or reduced such impacts*
> - *the effectiveness of the full suite of VPP provisions for ensuring certainty and consistency in decision-making on an ongoing basis, including the degree to which any amendments made have improved the operation of the provisions*
> - *the extent to which councils have fulfilled their obligations under the Act as planning and responsible authorities*
> - *[the Department's] overall performance in managing and supporting the state's planning framework (Recommendation 4.1).*
> - *To support and complement the operation of the performance measurement framework, [the Department] should also establish an ongoing program for obtaining stakeholder feedback on:*
> - *the operation of the Act and the VPP, and implementation of statutory processes, as a basis for identifying matters for further investigation and action in concert with results from the performance measurement framework*

    - *the timeliness and quality of [the Department's] advisory and support services to stakeholders, so that any opportunities for improvement can be identified and pursued*
    - *any emerging issues or trends that require attention (Recommendation 4.2).*
- *[The Department] should develop a comprehensive strategy with detailed timelines for the further development and implementation of the performance measurement framework (Recommendation 4.3).*
- *[The Department] should review and revise the existing performance targets for the planning scheme amendment process so that they accurately reflect the elapsed time for decisions to be made on authorisations and approvals (Recommendation 4.4).*

In the next Auditor General report in 2017, the Government was heavily criticised for not taking up the 2008 recommendations.

A new recommendation was provided:

> *We recommend that the Department …:*
> *2. strengthen its approach to overseeing and continuously improving the planning system, by:*
> - *incorporating a requirement in the revised Victoria Planning Provisions for its regular review*
> - *facilitating the development of a technical committee to undertake regular reviews of the Victoria Planning Provisions and its content …*
>
> *6. work with councils to complete the performance measurement framework for the planning system so that it provides the relevant information and data at the state and local levels to assess the effectiveness of the planning system, measure the achievement of planning policies and support continuous improvement of the planning system through monitoring the effectiveness of reforms…*

These recommendations were also not taken up.

Though it should have been in place since at least 1999, there is no better time than during a review and rewrite of the principal Act to propose a durable mechanism for continuous review and improvement of the VPP, which requires system designers and system administrators to work together to ensure that decisions drive system efficiency, accountability, transparency and integrity.

Such a mechanism should come in the form of a statutory body that:

1. Is attached to Part 1A of the Act (or equivalent in the future consolidated Act);
2. Is charged with continuously reviewing, and making recommendations for the improvement to, the VPP;
3. In doing so must consider system efficacy and not only throughput;
4. May also provide advice on related planning system matters including legislative proposals;
5. Establishes and maintains a structured approach to planning system user feedback and engagement;
6. Includes no more than 50% state government appointees (e.g. 4), but requires the committee to make decisions by super-majority;
7. Includes places for expert advisors from neither state nor local government (e.g. 2);
8. Includes a critical mass of local government planning system administrators (e.g. 4), drawn from a pool of potential appointees, one per council, and with an appointment mechanism that overcomes any risks of manipulation;
9. Does not bar the local government appointees from discussing the matters being debated by the statutory body with the remainder of the pool and the MAV;

10. Has made available to it the data and analysis it needs to understand the performance of all parts of the planning system (including tribunal decisions of importance);
11. Meets regularly enough, and with a level of predictability and continuity, that allows its members to generate collegiality, trust and productivity; and
12. Publicly reports at least annually.

This statutory body should not be an alternative to broad consultation on major VPP planning scheme amendments, but – if the body is performing as intended – its advice on how to go about major VPP planning scheme amendments will have been persuasive prior to their drafting.

Statutory bodies of state government and non-state government member oversight of subsidiary legislation is not unusual: the Building Regulations Advisory Committee, for example, is an independent statutory body established under section 210 of the *Building Act 1993.*

Recommendation 6

That a statutory body including a balance of state and local government system designers and administrators, with provision for additional expert advisors, be established to oversee the continuous review and improvement of the VPP and to maintain a structured approach to planning system user feedback and engagement.

7 The Victorian planning objectives

7.1 The current objectives

The objectives of planning in Victoria, and the objectives of the planning framework established by the Act, are found at Section 4 of the Act.

The objectives of planning in Victoria are—

(a) to provide for the fair, orderly, economic and sustainable use, and development of land;
(b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
(c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
(d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
(e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;
(f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);
(fa) to facilitate the provision of affordable housing in Victoria;
(g) to balance the present and future interests of all Victorians.

The objective at (fa) was inserted in 2017. The objective has demonstrably failed, and more serious affordable housing mechanisms are required if it is to be realised (see section 8.2).

Despite this, we consider the objectives to be generally sound. We are uncomfortable with the extent of planning pathways that have been created that 'switch off' the requirements on responsible authorities under Section 60 ('What matters must a responsible authority consider?') to consider 'the objectives of planning in Victoria' found at Section 4. Though the objectives are high level and the specificity of provisions in planning schemes will always provide the stronger decision-making guidance, it is important that every planning decision is grounded in clear purpose. The cumulative effect of planning pathways that 'switch off' consideration of the planning objectives is to prioritise process over purpose. Both are important.

Section 4 of the Act goes on to list the objectives of the planning framework. They are—

(a) to ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels;
(b) to establish a system of planning schemes based on municipal districts to be the principal way of setting out objectives, policies and controls for the use, development and protection of land;
(c) to enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;
(d) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;
(da) to provide for explicit consideration of the policies and obligations of the State relating to climate change, including but not limited to greenhouse gas emissions

reduction targets and the need to increase resilience to climate change, when decisions are made about the use and development of land;

(e) to facilitate development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes;

(f) to provide for a single authority to issue permits for land use or development and related matters, and to co-ordinate the issue of permits with related approvals;

(g) to encourage the achievement of planning objectives through positive actions by responsible authorities and planning authorities;

(h) to establish a clear procedure for amending planning schemes, with appropriate public participation in decision making;

(i) to ensure that those affected by proposals for the use, development or protection of land or changes in planning policy or requirements receive appropriate notice;

(j) to provide an accessible process for just and timely review of decisions without unnecessary formality;

(k) to provide for effective enforcement procedures to achieve compliance with planning schemes, permits and agreements;

(l) to provide for compensation when land is set aside for public purposes and in other circumstances.

The objectives of the planning framework are more detailed than the objectives of planning, and it is easier to see that some have not been met. Notably:

Table 4: Objectives of the planning framework that are generally not being met

Objective	Commentary
(a) aims for co-ordinated action at State, region, municipal levels	Section 4 of this submission explains the loss of co-ordination over time.
(c) aims to integrate policies in relation to development decisions	The objective has suffered under the introduction of new codified pathways and VicSmart streams that embed some policy within them but otherwise remove links to the remainder of the planning policy framework, preventing the integration of environmental, social, economic, conservation and resource management policies – in favour of 'speed and certainty'
(d) aims for the consideration of environmental, social and economic effects	While some strategic planning exercises do this well, the planning system lacks a strong mechanism for environmental assessment of high impact matters;[38] the social effects mechanism introduced by the current government in 2015 (to make the number of objectors a relevant consideration in whether a proposal has a significant social effect[39]) has been frequently 'switched off' since; and the lack of interest in maintaining regional and metropolitan plans that set out economic strengths and opportunities continues to hold back the integration of planning with economic development strategies.
(f) aims for a single authority to issue permits	Recent Ministerial approval pathways have created 'options' for applicants which invite forum shopping and erode transparency (see section 5.7).
(i) aims to ensure that those affected by proposals receive appropriate notice	The patchwork of notice exemptions has led to significant complexity and while simple applications could reasonably be exempt from notice, exemptions now frequently extend to very significant developments, often because they are bundled with appeal exemptions, defeating the 'fair notice' objective. We say more about modernising notice in section 14.
(j) aims for timely appeal processes without unnecessary formality	The tribunal is increasingly formal and inaccessible. Its pre-COVID waiting times to have matters heard were inordinately long.
(k) aims for effective enforcement and compliance	Section 15.1 of this submission explains the challenges to effective enforcement and compliance.
(l) aims to provide for compensation when land is set aside for public purposes	This has been mostly lost in the many changes to the VPP since 1996.

[38] See p294 in Rowley, Stephen, 2023. *The Victorian planning system : practice, problems and prospects*. 2nd edition. The Federation Press Annandale, NSW

[39] See *Planning and Environment Amendment (Recognising Objectors) Act 2015.*

Planning framework objective (da) is new: it commenced on 26 March 2025, 12 months after the Assent of the *Climate Change and Energy Legislation Amendment (Renewable Energy and Storage Targets) Act 2024.* Its objective of ensuring "explicit consideration of the policies and obligations of the State relating to climate change" therefore did not apply to VPP changes VC257, VC274 and VC267, all introduced in the 30 days prior (though these amendments do make some limited provision for environmentally sustainable design). We query if this was the intention of the legislature.

7.2 Ideas for new objectives

Changing the objectives is not simple; they are intended to be relevant to the entire planning system. A process of the type set out in section 6 is therefore necessary: if part of a holistic review of the planning system, changes to the objectives could be durable.

The objectives were written in a different time. Housing was more affordable, governments played a larger role in the provision of public housing, and climate change and net-zero carbon emissions were only emerging as concepts. The importance of walkable communities and other more sustainable transport options, especially in densifying urban areas, is now much better understood in Australia, and the planning profession, knowledge and literature have expanded substantially.

The objectives should therefore be reviewed to consider whether they are ambitious enough to meet the transformational change necessary to meet Victoria's current and future challenges.

We put forward some ideas for consideration as part of a planning system-wide review:

Ideas for changes to the objectives of planning in Victoria

- Objective (c) should extend to 'healthy': "to secure a pleasant, efficient, healthy and safe working, living and recreational environment for all Victorians and visitors to Victoria".

- A new objective that gives effect to the *Climate Change Act 2017*: "to achieve and maintain net zero greenhouse gas emissions". That Act defines the term 'net zero greenhouse gas emissions' and sets 2045 as the date by which net zero is to be achieved. If we are rewriting the Act to last another 40 years, this objective, or a similar or more ambitious objective, will be necessary.

- Currently objective (f) seeks "to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e)." This does not apply to the objectives (fa) ("to facilitate the provision of affordable housing"), (g) ("to balance the present and future interests of all Victorians") and the new objective above regarding greenhouse gas emissions. Consideration should be given to extending (f) to apply to all of the other objectives.

Ideas for new objectives of the planning framework

- A new objective: "to provide for integrity, accountability and transparency in decision-making". The purpose of the objective is to ensure that permit triggers, referrals and other decision gateways are clear, predictable, consistent and transparent, to generate trust in the planning system as a whole.

- A new objective: “to provide subsidiarity”. The purpose of the objective is to ensure that the planning system can achieve a social licence – see section 4.4.

- A new objective: “to ensure that the effects on Victoria’s food security are considered”. The purpose of the objective is to implement Recommendation 24 of the Legislative Council Legal and Social Issues Committee’s report on its inquiry into food security in Victoria,[40] which we agree with.

- A new objective: “to facilitate high quality and sustainable design”. The purpose of the objective is to recognise that high quality design has long term environmental and operational affordability benefits.

- A new objective: “to set out a sustainable transport hierarchy”. The purpose of the objective is to better integrate land use and development spatial planning with transport policy considerations.

In lieu of advice from the Victorian Aboriginal Heritage Council or the First Peoples’ Assembly of Victoria, we have not proposed specific words for a new objective relating to Caring for Country. These bodies should be consulted on the adequacy of the objectives in the Act, and whether the legal delineation of the Planning and Aboriginal Heritage frameworks remain fit for purpose.

We acknowledge that there must be a distinction between the purposes of the *Aboriginal Heritage Act 2006*, which empowers Traditional Owners as protectors of their cultural heritage, and the purposes of the Planning and Environment Act. The planning objectives must not duplicate or erode the purposes of the *Aboriginal Heritage Act 2006*; they should complement them.

7.3 Measuring progress

The reform program should develop ways of measuring progress against the objectives. This is discussed further in section 6.

Recommendation 7

That a review of the objectives of planning, and the objectives of the planning framework, be conducted as part of the redesigned reform program. This review should enable meaningful public discussion and consider:
1. A new objective “to achieve and maintain net zero greenhouse gas emissions”;
2. Expanding the objectives of the planning framework to include integrity, accountability and transparency in decision-making, provide for subsidiarity, provide food security, facilitate high-quality and sustainable design and provide a sustainable transport hierarchy.

[40] Legislative Council Legal and Social Issues Committee, November 2024, *Food security in Victoria*.

8 Housing supply, location and affordability

MAV Housing Taskforce Submission to a Plan for Victoria

The MAV's position on housing supply, location and affordability was developed by the MAV Housing Taskforce, informed by an evidence-base provided by RMIT's Centre for Urban Research, and provided in our August 2024 submission to *Plan for Victoria*.

It remains directly relevant to questions of Victorian planning system reform.

The submission agreed that while housing capacity targets have a role in informing local planning, they are by no means sufficient to address the housing affordability problem: many other factors and system-wide considerations need attention. Its recommendations include clarifying that the role of housing targets is to indicate housing capacity.

It argues that growth and change must come with an enduring 'liveability return', and achieving this requires dealing councils in to the planning and development process, and for all levels of government to proactively invest in local amenity and infrastructure improvements to improve liveability and local pride in areas of change.

8.1 Housing capacity targets

The MAV is encouraged to see that the final *Plan for Victoria* clarified that housing targets will be measured as housing *capacity* targets.

We are also encouraged that *Plan for Victoria* proposes to "consider" setting percentage-based targets for new social or affordable homes. The research commissioned by MAV for the Housing Taskforce submission considers the sorts of housing capacity and affordability target mechanisms are likely to succeed. Further opportunities to consider housing diversity and quality should also be considered.

The MAV and member councils have broadly supported the overarching settlement strategy in *Plan for Victoria*, with 70 per cent of new homes to be facilitated inside established urban areas. How the planning system can be reformed to facilitate this without compromising its other objectives remains a formidable challenge.

The DTP has begun a program of consultation with local government planners about the methodology underpinning the housing capacity targets. The *Housing Capacity Assessment Platform (HCAP)* and *Access To Opportunities and Services (ATOS)* tools show great potential, establishing a consistent and dynamic state-wide approach to measuring and modelling housing capacity. An obvious benefit will be the potential for reducing the costs to councils of conducting individual housing capacity studies. Where these have been pursued, however, and especially where they have only recently been completed or are nearing completion, those local studies should not be discarded. (They may in fact offer very useful bases to test and improve the HCAP and ATOS.)

Unfortunately, these tools are being presented after the targets have been set. A genuine commitment to open cooperation with councils in applying and refining the tools will be necessary to improve the implementation process.

The translation of housing capacity targets into planning schemes, and details about the procedure and timing of that translation, have not yet been resolved. The MAV wants to see an efficient, effective procedure that adequately considers the identification of opportunities and risks by councils and communities. This will be vital to generating understanding and support for state-wide, regional, municipal and sub-municipal settlement strategies. Achieving this within the timeframes indicated by the state, likely by the November 2026 State election, will not be possible without a harmonised advisory panel process and a stronger public engagement strategy.

Perhaps the most important policy consideration in translating housing capacity targets into planning schemes will be how the targets will be applied over time. It remains unclear if capacity commensurate with the 2051 target is intended to be released immediately, and if the targets are intended to be periodically refreshed.

Housing capacity targets alone are no panacea for the housing crisis. The planning system and its various decision-makers cannot force developers to act on approved planning permits, and the planning system does not regulate the cost of materials and labour. Nor can it regulate land tax or coerce property ownership and investment trends.

The MAV, and councils, want to see reforms that unlock new housing supply across the metropolitan region as well as rural Victoria and our regional cities. Councils are concerned though that reforms designed for the metropolitan Melbourne context as the standard will lead to failures or confusion in the planning system elsewhere, either:

- Geographically: unintended consequences in small towns and regions, if controls and codes designed for metropolitan areas are imposed;
- Temporally: the foremost challenge facing the planning system in 10 years may be substantially different to today; or
- Structurally: policies and controls designed to uphold other objectives of planning in Victoria being unnecessarily devalued in the pursuit of housing approvals.

Housing capacity targets have the potential to be a very important tool as part of integrated planning reform and complementary measures to address housing supply and affordability barriers. We look forward to their further development. But they must be considered in a broader economic, geographic and environmental context.

8.2 Affordable housing

While embedding housing capacity targets in planning schemes does not require any changes to the principal Act, facilitating affordable housing contributions does.

The *Planning and Building Legislation Amendment (Housing Affordability and Other Matters) Act 2017* introduced into the *Planning and Environment Act 1987* a new objective of planning in Victoria: “to facilitate affordable housing supply.” The Act enabled a clearer process for making voluntary affordable housing contributions but, as these cannot be mandatory, the new objective was not picked up by objective (f): “to facilitate development in accordance with the [other] objectives.”

The government has not put in place the investment and legislative settings to meet Victoria’s urgent social and affordable housing need. The planning system is not structured to deal with the shortfall and, due to the construction of the objectives of planning in Victoria in the Act, the Act does not identify this as a problem.

Councils experience the problems associated with voluntary agreements seeking social and affordable housing contributions. Voluntary agreements are inconsistent, expensive,

resource intensive and can be an add-on cost for developers who may not have factored in such a contribution at purchase or feasibility stage.

Current settings are no substitute for a clearly identified, upfront and easy-to-interpret mandatory contribution. Any review and rewrite of the Act must take the opportunity to create heads of power to enable such a mechanism.

In a paper commissioned by the MAV, SGS Economics & Planning propose[41] that:

> *[Any] Social and Affordable Housing Contribution should ensure a broad base of development is liable (including on non-residential development, and in areas outside metropolitan Melbourne and regional cities), contribution amounts are as clear as possible, and to minimise disruptions to existing development (i.e. introduced with a reasonable lead time of say 2-3 years and then phased up with the rate of contribution low initially and increasing over time).*

The broad application of the charge, and an independent, predictable and moderate process to alter the rate of the charge, will be essential to establish fairness and confidence. A modest rate could be phased in as the market recovers.

Precincts, where development rights are deliberately increased through strategic planning, are suitable for substantially higher mandatory contributions. These also need to be established upfront, to ensure that the cost is absorbed in land value and not passed on to the unit purchaser.

This two-tier approach is informed by seven resolutions of the MAV State Council from May 2019 to August 2024, all calling for heads of power to enable mandatory affordable housing contributions.

The 'review and rewrite' of the Act should also consider the relationship between the new heads of power and the definition of 'affordable housing', and consider updates to that definition (and any additional definitions required, such as 'key-worker housing'. We note that the City of Melbourne has tested such a definition,[42] which is worthy of further consideration). While the Act currently defines affordable housing through income measures, the cost of housing varies significantly across the state. What is affordable housing in one area will not be in another.

Recommendation 8

That the new Act:
1. Update the definition of affordable housing;
2. Provide a head of power to enable, in future, a modest affordable housing contribution to be required with new development generally.
3. Provide a head of power to enable mandatory affordable housing contributions through planning controls, to allow for future strategic planning work to introduce such controls where justified.

[41] See p41 in *Shaping regional and rural Victoria: A discussion paper for the Municipal Association of Victoria*, SGS Economics and Planning. (Mirrored in the metropolitan Melbourne paper, p38)
[42] City of Melbourne, 2024, *Defining key worker housing*.

9 Climate change, environmental sustainability and natural hazards

9.1 Legislative and policy misalignment

Concepts of adaptation and resilience, and mitigation, are intrinsically linked with land use and development. A more systemic approach to consideration of climate change, environmental sustainability and natural hazards in the planning framework is necessary.

The Auditor General found in 2017 that a lack of specific guidance to address key planning challenges ("social and affordable housing, climate change and environmentally sustainable development") formed part of the systemic problems in the planning system impeding effectiveness, efficiency and economy of planning schemes (see section 4.5).

Eight years later, progress is still weak, and the planning framework falls short of addressing the formidable heat, flood, biodiversity and energy efficiency challenges facing Victoria. In the absence of strong state-wide policy and control on environmentally sustainable development in the VPP, councils have pursued policy and control in local planning schemes at tremendous cost and mostly without success.

There is no shortage of policy-making at the state level on climate and environment. Policies and reviews with direct relevance to Victoria's planning framework that are underway or complete include:

- The Climate Change Strategy (Department of Environment, Land, Water and Planning (DELWP), 2021);
- Recycling Victoria: A new economy (DELWP, 2020);
- Victoria's Zero Emissions Vehicle Roadmap (DELWP, 2021);
- Gas Substitution Roadmap (DELWP, 2021);
- Victorian Renewable Energy Zones Development Plan (DELWP, 2021);
- Integrated Water management forums (and strategic directions) (ongoing);
- Victoria's Resilient Coasts 2100+ (place based coastal adaptation) (ongoing);
- Local Coastal Hazard Assessments (four pilots plus the unreleased Port Phillip Bay CHA);
- Cooling and Greening (Melbourne) (ongoing);
- Review of the Building Code (aligned with updates to the National Construction Code) (ongoing);
- Victoria's ESD Roadmap (ongoing); and
- Built Environment Adaptation Action Plan (draft, DELWP 2021).

(Many of these policies do not adequately consider agricultural land impacts and food security, which is discussed further in section 11 of this submission.)

The extent to which these policies are integrated with the planning framework is inconsistent. While the overarching climate policy for Victoria, *Victoria's Climate Change Strategy,*[43] contains aspirations to improve land use and development planning, these are very high level (e.g. "Ensure relevant legislation, standards and codes support the use of best available climate change data and adaptive planning principles as part of decision making, particularly as it relates to infrastructure, development and land use changes"). Detailed reform has been slow. The professional association of planners is now well ahead of government on proposals to improve the planning for the built environment to meet the challenges of climate change.[44]

[43] Victorian Government, May 2021, Victoria's Climate Change Strategy
[44] See policies on Planning Institute of Australia website

The role for Councils is difficult in this context. They do not have stewardship of the state-wide planning provisions, but they are required to give effect to those provisions while also upholding their duties under the *Local Government Act 2020* and *Climate Change Act 2017.*

The *Local Government Act 2020* requires at Section 9 that Councils must, in the performance of their roles, give effect to certain overarching governance principles. These include "achieving the best outcomes for the municipal community, including future generations" and promoting "environmental sustainability of the municipal district, including mitigation and planning for climate change risks."

The *Climate Change Act 2017* enables Councils to make a 'Council pledge', "a statement in respect of greenhouse gas emissions reductions resulting from the performance of the Council's powers and duties under the Local Government Act".

How these provisions relate to Councils' duties as planning authorities under the *Planning and Environment Act 1987* is a matter for debate. How Councils can fully realise their duties within a VPP that limits local climate solutions and ambition remains a challenge.

We think that the starting point for further integration of the climate, local government and planning legal frameworks is to ensure that it is an explicit objective of the planning framework to address climate change. A suggestion of how this could be expressed is found in section 7.2 of this submission.

9.2 Built environment

The most succinct analysis of barriers in the planning system to addressing climate change is found in a report by Hansen Partnership, commissioned by the Council Alliance for a Sustainable Built Environment (CASBE) and the Victorian Greenhouse Alliances.[45] Its summary finds that:

> *This project has arisen as a result of the disconnect between high level policy positions on climate change, both by State and local government, and the day-to-day decisions that are being made. In practice, local government decision-makers routinely report that the adoption of a zero-emission target and commitments to adaptation have not yet 'trickled down' to inform decision-making within the built environment, and more particularly, to decisions made through Victoria's planning system.*

It goes on to make 41 detailed recommendations for systemic change in Victoria's planning system. Its overarching recommendation for regulatory expression reflects the thesis of this submission:

> ***Shifting the balance of decision-making***
>
> *'High level' legislative obligations are important in driving change at the more fine-grained level. Planning is structured to flow from legislative requirements to objectives, which are then supported by the application of zones and overlays and the articulation of strategies. In turn, these are implemented by standards and guidelines. Failing to include, as part of legislative obligations, robust and comprehensive references to climate change, and to highlight the key role decisions made within the planning system play can compromise support for climate action.*

[45] Hansen Partnership, 2021, *Climate Change & Planning In Victoria: Ensuring Victoria's planning system effectively tackles climate change*.

How we live our lives is strongly influenced by the places we inhabit and these are the remit of planning. Ensuring that these places are focused on the twin goals of adaptation and mitigation has the potential to make a significant contribution to global objectives in responding to climate change.

Progress on Victoria's *Environmentally sustainable development of buildings and subdivisions, A roadmap for Victoria's planning system* (the ESD Roadmap)[46] has been slow and piecemeal. Stage one of the ESD Roadmap, now complete, was to update the Planning Policy Framework. Stage two of the ESD Roadmap, underway, is to update particular provisions relating to classes of residential development, and add new standards for commercial and industrial developments: clauses 53, 54, 55, 56 and 58. The particular provisions still to be updated are those regulating residential development over four storeys, and non-residential development.

Since the release of the Roadmap, councils have been increasingly concerned about the lack of ambition in proposed policies and controls. The May 2021 State Council sought to translate the work of local councils to a state-wide ESD policy that is suitably ambitious to respond to the challenges of climate change and the welfare of future populations, including by providing comprehensive coverage in the particular provisions and allowing for local variation through schedules where higher standards are warranted. With no progress in the intervening period, the October 2022, October 2023 and May 2023 State Councils renewed this call.

The state government has not agreed with this approach, though it has included some ESD standards in the recently announced updates to residential development particular provisions, including the *Townhouse and Low-Rise Code* at clause 55. While this has come with the benefit of state-wide application, it also extinguishes local policies, some of which have been in place and delivered higher standard ESD outcomes since 2015. Where those local policies included stronger standards than the new Code requires (which is true for 27 of 79 councils), it is not possible to ensure developments meet best practice environmental standards. The strategic basis of the 'Elevating ESD Targets' planning scheme amendment (a joint exercise of the same 27 councils) is now also in doubt, with the new Code removing the largest class of housing application type from the intended coverage of the 'elevated' ESD targets.

The Code also requires faster decision-making and a requirement to not have regard to the objectives of planning in Victoria. This includes objectives relating to sustainable use and development of land, the protection of natural resources and the maintenance of ecological processes, and balancing the present and future interests of Victorians.

The obvious problem is that where the ESD standards are not adequate to provide for strong energy, waste and water performance of new buildings, Victoria will struggle to meet its emissions reduction targets in the built environment. The cost to occupiers of the buildings will also be inflated: while the current housing affordability crisis is rightly concerned with the sale price and rents for homes, the ongoing occupancy costs associated with heating, cooling, airing, dehumidifying and repairing inadequately designed buildings can be considerable.

We are disappointed that the state government has not recognised the expertise within councils, CASBE and – for example – the Built Environment Sustainability Scorecard (BESS) Tool and the City of Melbourne's Green Factor Tool, to provide effective and efficient solutions to regulating the energy, waste, integrated water management, indoor environment quality and greening of the built environment.

[46] Victorian Government Department of Environment, Land, Water and Planning, 2020, *Environmentally sustainable development of buildings and subdivisions, A roadmap for Victoria's planning system*

We do not think that treating higher ESD standards as a 'special case', as the newly announced Great Design Fast Track does, is an adequate approach to measuring and improving the quality of new building stock in Victoria. While recognising exemplary design is a laudable objective, the standards of *all* new development needs to be adequate to adapt to a changing climate. Linking higher ESD standards to more secretive decision-making pathways and the removal of third party review is challenging, as it assumes that well-designed, higher density and high performing development should be separated from community consideration. This misunderstands the appetite of councils and Victorians to support strategies for the distribution of well-designed infill housing. Generating widespread support for such buildings is going to be essential if Victoria is to meet its strategies for the rapid distribution of infill housing.

Case study: Council Alliance for a Sustainable Built Environment (CASBE)

CASBE has considered the effect of the new *Townhouse and Low-Rise Code* on ESD outcomes with respect to three case study townhouses in inner Melbourne, by comparing new provisions (which extinguish local policy and rely on new Standards at Clause 55 as well as the National Construction Code) with previous provisions (which included local ESD policies harmonised across 27 local councils).

Significant differences include:

Performance under local ESD policy	**Performance under new Clause 55 and NCC**
Passive design	
Effective shading to north facing glazing	55.05-4 allows ineffective shading
Effective shading to east & west facing glazing	55.05-4 covers north only
Ventilation to all habitable rooms	55.03-10 requires single breeze path through one room per dwelling only to comply
Double glazing to bedrooms	7-star NatHERS and dwelling-wide maximum loads can be achieved with single glazing
North facing living areas	Clause 55 is silent, though the August 2024 draft controls included this
Integrated Water Management	
Rainwater collection and use for potable water reduction, stormwater flow reduction and stormwater quality improvement	Clause 55 provides for stormwater quality only; Rainwater tank no longer in building/plumbing regulations
Water efficient landscaping	Clause 55 is silent
Urban Ecology	
Vegetation cover beyond canopy trees	Clause 55 canopy tree – around 12% site cover and other vegetation lost
Transport	
Bicycle parking – 1 per dwelling	Clause 55 developments excluded from 52.34
Electric vehicle charging	Townhouses excluded in NCC 2022
Operational energy	
Energy efficient appliances or solar PV	NCC2022 allows for either, doesn't require both

The new objective of the planning framework enabled by the Act, found in Section 4 of the Act, commenced on 26 March 2025:

(da) to provide for explicit consideration of the policies and obligations of the State relating to climate change, including but not limited to greenhouse gas emissions reduction targets and the need to increase resilience to climate change, when decisions are made about the use and development of land.

This objective will need to be considered in the next round of reviews of planning schemes by councils. This will be difficult to do now that ESD is largely regulated via the particular provisions and not local policies.

An ongoing mechanism for review of the state's particular provisions will be necessary.

Recommendation 9

That the Government fast-track completion of Stage Two of the ESD Roadmap in a way that gives full effect to the local government 'Elevating ESD Targets' planning scheme amendments, providing full coverage of strong ESD standards through the particular provisions to all new buildings.

9.3 Natural hazards

Climate change is causing an increase in the frequency and severity of heat waves, floods and erosion in Victoria, yet the mechanisms to keep planning controls current and relevant are more cumbersome than they have ever been.

It is disappointing that the opportunities to reform planning scheme amendments (discussed in section 13.2) and restructure the VPP (discussed in section 12.3 and 12.4) have not adequately identified this problem. On the contrary, if the planning system is to see more and more Code-based development approval pathways that require the responsible authority to disregard evidence held by government about the risk to life and the environment identified in the latest flood, bushfire and coastal erosion modelling, the planning system will surely fail to bring about climate resilient regions, towns and cities.

The planning system has the capacity to identify and resolve conflicting policy imperatives. But this is only possible where planning controls are properly expressed and able to be updated quicky, efficiently and fairly.

Many of the planning responses to environmental risk and natural hazard are best tackled at the regional level. The state government understood this when it introduced the Wildfire Management Overlay in 2004 (now the Bushfire Management Overlay), and reformed the provisions of the Overlay and expanded its application to land following major fires. It understood that BMO controls should be consistent across municipal boundaries, and that one unified process (not one process per municipal planning scheme) is necessary to translate the latest evidence about bushfire risk into planning controls. The same logic applies to floods and erosion, but the state government has left councils to update land management overlays on a council-by-council basis.

This is not efficient. Consider the case of new flood modelling that applies to an entire catchment that expands across multiple local government areas (though one can just as easily substitute 'sea-level rise' for 'flood' and 'coastal region' for 'catchment'):

1. The assumptions underpinning the flood modelling would be equally relevant to all planning schemes;

2. If the amendment process challenges assumptions underpinning the modelling and those challenges are upheld by an expert panel, the consequences would also be relevant to all planning schemes;
3. It follows that there should be one statutory process of exhibition, panel and approval, not multiple;
4. Affected parties should not be required to follow multiple processes when one will do;
5. The costs involved in facilitating multiple amendments rather than one are significant;
6. The modelling is generally commissioned and held by state agencies, not councils.

The Legislative Council Environment and Planning Committee Inquiry into the 2022 flood event in Victoria recognised this inefficiency in its final report,[47] and recommended an obvious solution (our emphasis):

> *Recommendation 17: That the Victorian Government fast-track the implementation of flood studies into planning schemes. This should be done cooperatively with local councils and relevant stakeholders,* ***group together flood studies into regional amendments, and use the Minister for Planning's powers as required,*** *within two years of completion.*

The Victorian Government's response,[48] one of "support in principle", was accompanied by commentary that suggests that the government will stop short of appointing single planning authorities to progress updates to flood related land management overlays through regional amendments:

> *DTP will work with floodplain management authorities and councils to explore options to further improve efficiency to achieve updates to planning scheme flood controls within two years from completion of flood studies. This may involve legislative and governance changes, along with expanding the scope of current initiatives and consideration of interim flood controls.*

The commentary goes on to acknowledge the Regional Flood-related Amendments Program to support regional councils to accelerate planning scheme updates, and acknowledges a new Flood-related Amendment Standing Advisory Committee which can be accessed by both metropolitan and regional councils, but that "These initiatives are available to councils that request to use them."

With respect, this commentary misunderstands the scale of the problem, and it confuses the meaning of 'regional.' (The meaning of 'regional' in recommendation 17 of the Inquiry Report is akin to 'multi-council', whereas the meaning of 'regional' in the government response is akin to 'non-metropolitan'.) It will do nothing to accelerate the implementation of regionally consistent Land Subject To Inundation overlays and other flood-related land management overlays.

Such matters cannot be left to building law to address. This is especially true where planning controls apply height limits but building overlays require raised ground floor levels. Much of the new population envisaged in Plan for Victoria will require settlement in Activity Centres and precincts subject to flooding. In parts of inner Melbourne, the difference in ground floor levels supported by planning and building overlays can be over 2 metres. The consequences for orderly planning, administrative ease for applicants and design outcomes where buildings integrate with the public realm, are significant. The cleanest way to address this is through fast and fair planning scheme amendments with state-appointed planning authorities.

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[47] Legislative Council Environment and Planning Committee, July 2024, *The 2022 flood event in Victoria: Inquiry final report*

[48] Victorian Government, January 2025, *Victorian Government Response to the Legislative Council Environment and Planning Committee Inquiry into the 2022 flood event in Victoria*

The mechanisms to efficiently process regional planning scheme amendments with a single planning authority already exist in the Act (see section 13.2 for discussion about this), they just need to be applied.

The same logic applies to coastal erosion, with the non-implementation of the Port Phillip Bay Coastal Hazard Assessment data into planning schemes – to use one example – now causing significant land use and development conflicts. The efficient way to implement the data is through a single strategic planning exercise that applies a consistent approach to all affected municipalities.

A comprehensive review of the Act and planning system should also consider the role of planning in responding to environmental emergencies in the recovery phase. Given the frequency and duration of these events, this will only become more important.

Recommendation 10

That the Government apply a new method for introducing and updating flood- and erosion-related land management overlays in planning schemes. The method should provide for:
1. One amendment, exhibition, panel and adoption per strategic exercise (e.g. per catchment or per coastal region);
2. The relevant Minister or delegate being the planning authority;
3. The amendment being considered by a specialist standing panel; and
4. Affected councils, being the primary administrators of municipal planning schemes, being guaranteed significant opportunities to make submissions.

10 Infrastructure

Three of the five pillars in *Plan for Victoria* require a transformational change to infrastructure planning, funding and provision if they are to succeed:

- Housing for all Victorians;
- Accessible jobs and services; and
- Great places, suburbs and towns.

The MAV has long advocated the need to reform the infrastructure contributions system in a way that delivers essential infrastructure and services to new and growing communities. The prospect of simpler, fairer, more transparent, more predictable and easier to administer infrastructure contributions schemes is appealing. It is important that this be done well, to avoid unintended consequences including, most obviously, the creation of insurmountable infrastructure funding gaps.

The Victorian Government is currently undertaking a review of the infrastructure contributions system, including:

- Part 3B of the Act (Development Contributions)
- Part 3AB of the Act (Infrastructure Contributions)
- Part 9B of the Act (Growth Areas Infrastructure Contributions)
- Division 5A of Part 4 of the Act (Metropolitan Planning Levy); and
- The *Subdivision Act 1988* insofar as it enables Open Space Contributions at the point of subdivision, with triggers cross-referenced in the VPP at clause 52.01.

We understand that options to consolidate the infrastructure charges into a simpler, single charge are being explored.

This review follows the Victorian Auditor General's report *Managing Development Contributions* (March 2020) and the report of the Infrastructure Contributions Advisory Committee, which has not been publicly released.

We believe that a comprehensive review that also considers the windfall gains tax is warranted. A review should not be rushed, and will need to be consultative, to avoid unintended consequences. If the aim is to consolidate charges into a single Part in the new Act, a reference group subsidiary committee of the type described in section 6.3 of this report would be appropriate.

The matters that a new consolidated charge will need to consider are many. Any new infrastructure contributions scheme should:

- Measure, publish and consider the methodology so that the total expected infrastructure cost, and the total expected contributions, can be accurately predicted state-wide and by municipality and precinct;
- Identify funding sources for the gap between the local contribution and the local cost of infrastructure, noting that the gap cannot be taken up by rates alone;
- Enable the delivery of infrastructure before or with, not after, rapid population growth;
- Be easy to interpret to allow for confident development financing strategies (which in turn will limit costs passed on to apartment purchasers);
- Be no more complicated than it needs to be, with minimal regulatory burden for developer and administrator;
- Despite this, carve out land, or make commensurate accommodation, where contributions schemes that work well are already in place (and which would be extremely complicated to transfer);

- Avoiding councils being worse off under the new scheme compared to the old schemes;
- Be equitable within and across precincts and municipalities;
- Create a nexus between location of contribution and proximity of infrastructure;
- Be transparently reported to hold contributors, councils and the state government to account; and
- Consider emerging commercial housing products that do not subdivide land and therefore avoid the Open Space Contribution altogether (such as Build-To-Rent).

We note that *Plan for Victoria* does not seek to fully implement the Government's *Open Space Strategy for Metropolitan Melbourne 2021*, which proposes the development of a monitoring, evaluation and reporting framework for open space contributions and expenditure. With 70 per cent of new homes proposed for Victoria to be built in established urban areas, open space strategies are important. While some Activity Centre and SRL precinct planning has proposed new parks within walking distance of new populations, the lack of connection between the density of the populations and the sizes of the new parks gives rise to more inconsistency in open space planning across the metropolitan area.

We also note that, in a constrained financial environment and with the cost of land relatively much higher than when the open space contribution parameters were set down in the *Subdivision Act 1988*, council open space contributions are necessarily increasingly spent on open space upgrades rather than acquisitions. A consolidated view of state and local government open space provision responsibilities and capacities is necessary.

Recommendation 11

That the new Act consolidate Development, Infrastructure and Open Space contributions in such a way that:
1. Ensures all state and local infrastructure requirements can be met on a fair and equitable basis;
2. Funding gaps are quantified and funding shortfalls provided for;
3. Existing contributions schemes that work well are grandfathered;
4. Both the state and local portions of infrastructure contributions being expended in the precinct or region in which they were collected;
5. No council is worse off under a new scheme; and
6. Provides transparent and regular reporting on infrastructure revenue and expenditure at the state, municipal and precinct level.

11 Planning for rural Victoria

MAV and SGS discussion papers on regional, rural and metropolitan planning

In December 2023 SGS completed and published two discussion papers commissioned by the MAV, with the purpose of influencing the development and content of a new *Plan for Victoria*.

Shaping regional and rural Victoria: A discussion paper

Shaping metropolitan Melbourne: A discussion paper

The thesis of the papers is that a single Plan for Victoria is not sufficient, because it cannot possibly recognise or distinguish Victoria's distinct communities of interest and their unique spatial characteristics and needs. This is as true for metropolitan Melbourne, an integrated labour market requiring inter-connected thinking about housing, employment centres and clusters, transport and the environment, as it is for each of the regions, whether defined on the boundaries of the former Regional Growth Plans or otherwise.

Victoria is much more than the zones that permit residential use. Of all land in Victoria, 62% is rural zones and 32% is Crown land. Less than 10% of the land will take 100% of the housing growth forecast in the *Plan for Victoria,* while the plan only makes high-level planning policy statements and actions about the remaining 90% of land. Housing supply is of paramount importance to state and local government and a deep concern to our communities and individuals shut out of home ownership or experiencing severe housing stress – but the planning system is about more than housing supply alone.

It became clear with the release of the *Plan for Victoria,* and during information sessions on the implementation of the housing capacity targets, that the Regional Growth Plans (from 2014) will likely be deleted from all planning schemes. There is no proposal to replace them with a refreshed vision for the sustainable development and growth of rural and regional Victoria as separate to, though interconnected with, the metropolitan region.

The Planning Policy Framework (PPF) is yet to be updated to reflect *Plan for Victoria*. Currently, local planning schemes include the same statewide provisions in the PPF: a settlement strategy to ensure that the local settlements are planned in accordance with their relevant Regional Growth Plan. The regional policy then provides the relevant regional settlement strategies. While these are out of date and require a review, they show that the PPF comfortably caters for three tiers of aspirational policy expression. This structure was created in 2018, following an extraordinarily administratively burdensome translation exercise from the old State PPF and Local PPF into the consolidated PPF.

The MAV and rural and regional councils see the forthcoming proposed deletion of the Regional Growth Plans as a missed opportunity, and at worst ignoring the aspirations for rural and regional Victorians. It may become another example of planning system designers not understanding the nuances of rural and regional planning, and the interconnectedness of agriculture, landscape, environment, settlement, and industry in the regions.

Regional policy done well requires the continual evaluation of planning and expression of values and visions for the future: these are important exercises to generate shared purpose and give effect to community participation and influence. It is also a lifeline to small rural councils with one, two or three planners on staff. In rural councils, where there is every type of zone, one must become an expert on different types of land use conflict for different types of industry: constantly refreshing the suite of zones and parent controls using metropolitan Melbourne as the standard simply will not facilitate efficient planning decisions.

We fear that, without separate plans for rural and regional Victoria and a plan for metropolitan Melbourne, the government will fail to understand the integrated economies and labour markets that makes Melbourne a city and that supports regional employment. We also fear that regional growth 'anywhere', rather than in accordance with regional plans that integrate housing distribution with job creation, transport and infrastructure, and consider the ever-increasing competition for rural land and the sustainability of agricultural uses, will fail to facilitate sustainable and affordable growth.

Most reviews of the planning system, including the four recent reviews discussed in detail at section 4.5, have failed to consider the rural suite of zones, agricultural land uses, the distinctive landscapes, natural resources, and environmental hazards, of the regions. Any program of planning system reform must consider the reality of planning at the regional scale. We make practical suggestions for regional planning scheme amendments in sections 9.3 and 13.2.

Recommendation 12

That the government commit to reviving Regional Growth Plans for each region in the state (including metropolitan Melbourne), co-designing those plans with councils with generous public engagement, and expressing the policies in the Planning Policy Framework at the regional scale.

12 Restructuring the Victoria Planning Provisions

On 24-27 February 2025, DTP announced at a series of workshops with local government planners that the reform program would focus on three themes:

1. The structure and content of the VPP and planning schemes;
2. The planning scheme amendment process; and
3. The planning permit process.

While the MAV does not agree with this 'initial review' scope of reform (see section 5.9) and would like to see a different approach adopted (see section 6) we respond to the reform options proposed under each of the three themes in sections 12, 13 and 14 of this submission. These sections and the recommendations made under them should be read together.

12.1 What is being proposed

The four reform options put forward by DTP under the theme about **the structure and content of the VPP and planning schemes** are:

(1) Requiring scheme amendments to be consistent with state and regional plans. (*Reform option:* Require the Minister to be satisfied, when authorising and approving planning scheme amendments, that the proposed amendment is consistent with prescribed state and regional plans.)

(2) Re-establishing state-wide consistent zones and overlays with limited scope to make variations. (*Reform option:* Review the VPP and establish a new set of zones and overlays with variation limited to a narrow range of prescribed matters, and provide for new zones to be applied to established areas.)

(3) Explicitly linking VPP policies to controls specified in zones and overlays. (*Reform option:* Support integrated reforms to Victoria's planning laws (e.g. codification) by permitting only those policies that are linked to controls or particular provisions to be relevant to permit decision-making.)

(4) Inserting clear transitional arrangements for changes to the VPP. (*Reform option:* Require a minimum notice period for changes to the VPP, including specifying whether the changes are applicable to existing permit applications (or VCAT reviews) or only new applications/reviews.)

12.2 Requiring scheme amendments to be consistent with state and regional plans

DTP reform option	Local government response
Require the Minister to be satisfied, when authorising and approving planning scheme amendments, that the proposed amendment is consistent with prescribed state and regional plans.	**Support**, subject to being provided with an opportunity to critique the draft provision.

We question why the reform is necessary. While the Act does not place limits on the Minister's consideration of the merits of an amendment, it does allow the Minister to ask for more information from the planning authority, and over time it has become necessary to

issue guidance about how planning scheme amendments will be authorised and assessed. This guidance is found in Ministerial directions 9 and 11 and, especially, Planning Practice Note 46 – Strategic assessment guidelines. PPN46 requires any amendment to demonstrate how it supports or gives effect to the Planning Policy Framework, which includes State and Regional policy and plans. The guidance is sound, provided it is applied consistently.

We raise no objection to enshrining the requirements in the principal Act, but caution against doing so in such a way that leads to inflexibility in authorising imperfect amendments that can be improved through the amendment process, or an over-reliance on Ministerial exemptions from the standard. Any new provision in the Act will need to be the right balance of precision and flexibility. It will need to be considered alongside the reforms to the planning scheme process (see section 13).

The reform option appears to contradict the government's indication that there will be no new regional or metropolitan plans developed to sit underneath *Plan for Victoria*. An example of the potential problem that may arise is a council that wishes to develop a plan for a town that is not mentioned in the Plan for Victoria, and there is no robust regional plan in place to guide growth: will a planning scheme amendment that facilitates growth for that town be authorised? We have more to say about this in Section 11 of this submission.

12.3 Re-establishing state-wide consistent zones and overlays with limited scope to make variations

DTP reform option	**Local government response**
Review the VPP and establish a new set of zones and overlays with variation limited to a narrow range of prescribed matters, and provide for new zones to be applied to established areas	**Oppose**. The reform option will not reduce complexity, but it will prevent planning responses to local and regional environmental considerations while removing the benefits of public participation and confidence. Much more information is needed about the purported objectives and benefits of this reform option.

It is unclear if DTP considers the recent introduction of new zones and overlays, and the Townhouse and Low-Rise Code, to be the commencement of the implementation of this reform option, or if the reform option only proposes a future comprehensive restructure.

Reforms already implemented: new zones and overlays (25-28 February 2025)

The government has introduced two new zones and one new overlay to the VPP since 25 February 2025, to be applied to established areas:

- The Housing Choice and Transport Zone (HCTZ) and the Built Form Overlay (BFO) were introduced to facilitate the new Activity Centres on 25 February 2025; and
- The Precinct Zone (PRZ) was introduced to facilitate the Suburban Rail Loop precincts and other priority precincts on 28 February 2025.

These new controls abandon naming conventions and blur the lines between the existing Activity Centre Zone, Design and Development Overlay, Transport Zone and various residential zones.

The PRZ and the BFO parent provisions are notable for their ability to be varied by schedules, with the main building envelope parameters all pushed to those schedules. The PRZ requires local schedules to set out a "use and development framework plan" and the BFO requires local schedules to set out a "development framework".

This is, of course, the opposite of 'limiting variation to a narrow range of prescribed matters'. It provides extensive local flexibility and the proliferation of local schedules.

It is also the result of different parts of the Victorian Government producing different suites of new controls, without a coordinated attempt to change the controls that already exist or to design one new control that would work for both Activity Centres and priority precincts.

Reforms already implemented: the Townhouse and Low-Rise Code (6 March 2025)

Clause 55 was replaced on 6 March 2025 with new deemed-to-comply provisions for two or more dwellings on a lot.

While this alone has not extinguished local schedules to residential zones, it has had a similar effect wherever proposed development meets the criteria for the code. The policy implications have included the extinguishment of local environmentally sustainable design and tree canopy policies. Where the code's requirements for canopy coverage is far less than the local policy would otherwise require, the effect of the code is to materially weaken the environmental outcomes of new development. This is discussed further in the next sub-section.

Potential future application

If the reform option does not simply refer to the reforms already implemented, and is intended to apply to the rest of the VPP, i.e. a complete overhaul of zones, we urge caution.

We say this not only because of unfulfilled purposes of past reforms (most notably, the residential zone reviews of 2013-17 which promised but failed to deliver clarity) but also because of the consequences for work completed and underway by councils to ensure that local variations can meet statewide objectives (including housing supply) while responding to local environmental constraints.

Councils' strategic planning efforts involve a level of local and regional place-based knowledge that cannot possibly be catered for in one-size-fits-all statewide controls. Victoria contains significantly diverse landscapes and communities, and that diversity must be catered for by VPP that allow reasonable local and regional responses. It also contains areas of intensive development and brownfield and greyfield redevelopment, where the state government itself has relied on local schedules and special purpose zones to ensure orderly planning – most significantly in activity centres (over decades; not only the recent program) and in and around the central city.

Case study: Mornington Peninsula Shire

Planning Scheme Amendment C219morn changes existing residential zones and planning controls to enable housing growth in appropriate locations. It seeks local variations to residential zones to promote the preferred distribution of building footprints without reducing yield.

The material pay-off for increased setbacks is more walls on side boundaries. This approach enables deep soil planting for significant vegetation including canopy trees and creates more functional open spaces around buildings. These elements improve cooling, biodiversity and visual appeal.

These superior environmental outcomes that do not limit housing supply will not be possible if local variations in schedules to zones are disallowed, or 'switched off' through codified approval pathways.

If taken to its logical conclusion, this reform option could result in one of two outcomes. If the state government retains its commitment to disallow local schedules to zones while refusing to consider poor planning outcomes that emerge, poorly designed development that is not responsive to local environmental conditions will proliferate. If, on the other hand, the state government retains its commitment to disallow local schedules to zones while seeking new planning controls to respond to local and regional environmental constraints, the outcome will be the proliferation of new zones. Either option leads to structural dysfunction of the VPP and poor planning outcomes.

If this reform proposal is a response to planning system complexity, we query whether the causes of that complexity are properly identified. The lack of effective review of the VPP over time, as well as the recent tendency to use the particular provisions to drive far-reaching changes to planning outcomes in ways that challenge the design of the VPP, are the main contributors to rapid expansion in the length of planning scheme ordinance (see section 4.2).

Case study: Mansfield Shire Council

In 2022, Mansfield Shire Council adopted a new Mansfield Planning Strategy, setting out land use and development principles for the municipality until 2024, at a cost of $220,000. The strategy found that growth rates in Mansfield have been higher than the Victoria in Future forecasts, requiring the council to identify additional land for residential development. The Strategy has been translated into amendment C60mans, which will shortly make its way to the Minister requesting approval for public exhibition.

The amendment makes extensive use of the schedules to the zones and overlays in the VPP. This is the result of two years of work and extensive community consultation, with the full and ongoing support of the Department of Transport and Planning.

If the reform option to limit local variation of zones and controls is implemented, the basis for the amendment will be lost, the expense incurred will have been wasted and the community's influence on strategic planning will have been removed.

The reform option also has the potential to undermine the democratic legitimacy of the planning system (see section 4.4). Local schedules to vary controls, along with local planning policies to guide how permit applications should be assessed, are usually the product of time-consuming and costly strategic planning projects undertaken by councils. This work must carefully navigate the local environmental circumstances with the needs and desires of locally engaged communities. These studies and community consultation programs are among the most important opportunities to allow communities to shape planning strategies and to build community understanding and support for the planning framework. The reform option appears to ignore these benefits entirely.

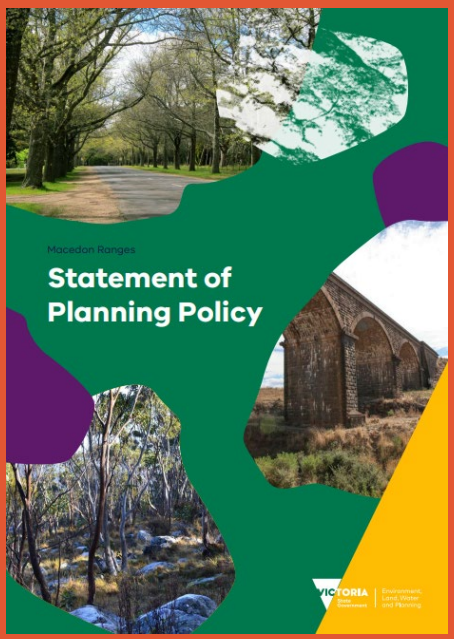
When read alongside the reform options relating to reforming planning permit processes (see section 13), the reform option to limit local variation is particularly worrying because of its consequences for the social licence of the planning system.

No serious attempt has been made by DTP to identify the policy objective of this reform or its purported benefits. If those benefits could be estimated, a serious discussion about the advantages, disadvantages and pay-offs could be conducted. In lieu of that, we are deeply concerned about the proposal and suspect that – like so many VPP reviews since 2001 – it has not correctly identified the causes of 'complexity' and will not provide certainty or improved planning outcomes.

There is no easy, quick and mechanical solution that can be simply applied to all parts of the state. Zone and overlay simplification is no substitute for integrated decision-making and place-responsive planning.

Case study: Macedon Ranges Shire Council

Part 3AAB, Distinctive areas and landscapes, was inserted into the Act in its current form in 2018. It provides for a declaration that an area is a 'distinctive area and landscape', which in turn requires a Statement of Planning Policy by the Minister. The *Macedon Ranges Statement of Planning Policy 2019* (MSRPP) applies to the entire shire and, under the Act, its objectives are binding on responsible public entities such as the Council.



One objective is: *"To plan and manage growth of settlements in the declared area consistent with protection of the area's significant landscapes, protection of catchments, biodiversity, ecological and environmental values, and consistent with the unique character, role and function of each settlement."*

It is highly unlikely that this objective will be met if, in future, the ability to vary zones and controls by local schedule is removed. Already, in a current strategic planning project, the Council has found that adopting state standard provisions to the development of parts of Riddells Creek would fail to uphold the MSRPP objectives.

What could be done instead?

A shared agreement on strategies for regulatory expression would better understand the causes of complexity in the system and balance the objective of reducing complexity with all other objectives necessary for an orderly and fair planning system (see section 6).

Opportunities to consolidate some zones, and fully consider the consequences of doing so, could then be considered.

12.4 Explicitly linking VPP policies to controls specified in zones and overlays

DTP reform option	Local government response
Support integrated reforms to Victoria's planning laws (e.g. codification) by permitting only those policies that are linked to controls or particular provisions to be relevant to permit decision-making.	**Oppose**. We request a detailed paper setting out the purpose, objectives and strategy of the reform option, as well as proposed consultation mechanisms and meaningful opportunities to test the new provisions.

It is very unclear whether the reform option will apply to the entire VPP, or is only a reference to those reforms already made since 6 March 2025.

Reforms already implemented: the Townhouse and Low-Rise Code (6 March 2025)

Clause 55 was replaced on 6 March 2025 with new deemed-to-comply provisions for two or more dwellings on a lot. The policy implications have included switching off local environmentally sustainable design and tree canopy policies. Where the code's requirements for canopy coverage is far less than the local policy would otherwise require, the effect of the code is to materially weaken the environmental outcomes of new development. This has been discussed in media recently.[49]

The code is notable for its requirement on decision makers to not have regard for the objectives of planning in Victoria as well as other matters that would ordinarily be required to be taken into consideration (such as any "significant effects which the responsible authority considers the use or development may have on the environment, or which the responsible authority considers the environment may have on the use or development"). But it is the extinguishment of state and local policies discussing environmental risks that we are most worried about.

Where government holds evidence of environmental risks (such as site contamination, erosion, flooding, sea level rise, proximity to high pressure pipelines and so on), and the need to manage these risks is referred to in the Planning Policy Framework or is in the process of being introduced through planning controls, none of the evidence may be taken into account when assessing the application. The code, in expressly requiring council planners to disregard known risks to human health and safety, creates new ethical conflict for professional planners.

Either the code should be amended to allow for the consideration of known environmental risks (by enlivening the Planning Policy Framework and all of Section 60 of the Act), or the Victorian Government must provide the resources necessary to fast-track the introduction of overlays that regulate known environmental risks.

[49] *Melbourne tree canopy goal 'impossible' without ripping out roads*, The Age, 13 March 2025

The treatment of all residentially zoned parts of the state as being equally suitable for application of the code irrespective of the slope of the land, the exposure to natural hazard and environmental risk, the health and capacity of the soil, the local and regional ecological vegetation class and the existence or absence of enabling infrastructure, is likely to lead to unintended outcomes. We are not aware of any modelling conducted by DTP to anticipate them.

We are also concerned about the impact of the code on areas declared by the Governor in Council to be 'distinctive areas and landscapes' under Part 3AAB of the Act. It appears that some development may be deemed to comply under Clause 55 whether or not it is consistent with the Minister's directions in the Statement of Planning Policy for the distinctive area and landscape.

Potential future application

If the reform option is interpreted at face value and assumed to apply, in future, to all codified planning pathways, the consequences need to be anticipated.

Most state and local policies in the Planning Policy Framework are intended to apply universally, and be considered in the assessment of applications when relevant. It is the application and assessment process that considers whether a policy is relevant. A future system where some codes include all relevant policy, and others describe which policies are relevant and which are not, is likely to lead to new structural complexity. Such a structure is unlikely to improve the quality and maintenance of the Planning Policy Framework (both state and local elements).

If policies are liable to being switched off at any time (without notice, if recent practice continues), we ask: How will a planning authority confidently conduct a strategic planning exercise to introduce or update a policy? And if planning authorities cannot conduct strategic planning exercises with confidence, what impetus is there to keep policies current and relevant?

Policy does not only serve to support applicants and decision-makers in satisfying permit assessment criteria. Even where the responsible authority is required to ignore local policy, that policy may still serve the purpose of influencing the applicant when designing the development proposal. Cross-references to important policy about flooding, erosion, contamination and other local conditions may – even if not a decision consideration – encourage a higher quality proposal. Pushing these considerations to the building permit stage, where major redesigns may be required necessitating amendments to the planning permit, is hardly an efficient process. None of these benefits of planning policy are considered in the reform option.

The reform option's implications on Clause 74.01 (Application of zones, overlays and provisions) and schedules in each planning scheme is unclear. Any implementation would also need to consider mechanisms to avoid policies being overlooked where cross-references to that policy may not have been updated.

What could be done instead?

A shared agreement on strategies for regulatory expression would better understand the causes of complexity in the system and balance the objective of providing clarity with all other objectives necessary for an orderly and fair planning system (see section 6).

12.5 Inserting clear transitional arrangements for changes to the VPP

DTP reform option	Local government response
Require a minimum notice period for changes to the VPP, including specifying whether the changes are applicable to existing permit applications (or VCAT reviews) or only new applications/reviews.	**Support in principle**. We request a detailed paper setting out the purpose, objectives and strategy of the reform option, as well as proposed consultation mechanisms and meaningful opportunities to test the new provisions.

We support this option and that it be a requirement in the Act. The minimum notice period should be 60 days to allow for feedback from system administrators and time to correct errors, with a reduction only possible if the Minister publishes reasons for the urgency.

Councils have reported to the MAV that each time the VPP are changed without consultation or forewarning, they must:

- Re-assess all affected applications;
- Instantly notify applicants, submitters and referral authorities;
- Amend internal systems to facilitate online application registers; and
- Adjust fees, including returning application fees.

The time taken to do this across 79 councils is difficult to quantify. We do know, however, that the delays to other applications caused by administrative disruptions can be significant.

We note that none of the recent changes to the VPP have observed a notice period of any length, including those made after the DTP proposed this reform option on 24 February.

A notice provision is necessary because of a failure of other mechanisms to provide the notice necessary to inform local government – the primary administrators of the planning system – of major planning system restructures. As discussed in section 4.3, the decision by the Victorian Government to cease observing the Victorian State-Local Government Agreement[50] and its requirement on departments to consult with local government before any new or altered regulation with cost and resource implications is introduced has had detrimental consequences for both state and local governments.

12.6 Summary

There is not enough detail provided to know if the reform options, taken together, will provide a benefit to the planning system without compromising administrative efficiency, transparency and accountability, requisite discretion and variation to respond to local environmental considerations, community engagement and public support.

Recommendation 13

That the reform options in the 'structure and content of the VPP and planning schemes' not proceed until a detailed paper setting out the purpose, objectives and strategy of the reform program, as well as proposed consultation mechanisms and meaningful opportunities to test the new provisions, are provided. In the interim, ensure that proposed changes to the VPP are published at least 60 days prior to introduction to allow for meaningful consultation with system administrators.

[50] Victorian State-Local Government agreement

13 Reforming planning scheme amendment processes

13.1 What is being proposed

The five reform options put forward by DTP under the theme about **the planning scheme amendment process** are:

(1) Planning scheme amendments – Proportionality of the process. (*Reform option:* Implement three pathways for planning scheme amendments that are proportionate to complexity, risk and the potential impact of the amendment. This will deliver time and cost savings, and provide greater certainty and predictability to development proponents and the community regarding the process to be followed.)

Stream 1 (3-4 months)	Stream 2 (6-12 months)	Stream 3 (9-18 months)
Authorisation Targeted consultation Submission to Minister Minister decision Gazettal Scrutiny of Acts and Regulations Committee (SARC) consideration and tabling in Parliament	Authorisation Public exhibition Published response to issues raised in submissions (no Panel hearing) Adoption and Submission to Minister Minister decision Gazettal SARC consideration and tabling in Parliament	Authorisation Public exhibition Panel review Published report and recommendations to Minister Minister decision Gazettal SARC consideration and tabling in Parliament

(2) Recalibrating the role and conduct of planning panels. (*Reform option*: Make clear that the role and function of a panel is to provide an impartial review of the amendment, with the panel having discretion over who it chooses to hear from during public hearings.)

(3) Making notice requirements clear. (*Reform option:* Require planning authorities to design a public engagement plan for transparent, accessible engagement, and allow the Minister to require adherence to this plan as a condition of authorisation.)

(4) Creating more explicit processes for the initiation of amendments. *(Reform option:* Build on CPLA Bill reforms to develop formalised procedures, statutory timeframes, and cost recovery provisions for proponent-led amendments.)

(5) Providing additional structure and statutory timeframes for authorisation of amendments. *(Reform option:* Prescribe criteria for Ministerial decision-making at authorisation (including consistency with state plans) as well as timeframes for further information requests and final decision.)

13.2 Planning scheme amendments – Proportionality of the process

DTP reform option	Local government response
Implement three pathways for planning scheme amendments that are proportionate to complexity, risk and the potential impact of the amendment. This will deliver time and cost savings, and provide greater certainty and predictability to development proponents and the community regarding the process to be followed.	**Support in principle**, subject to: 1. Further detail and opportunities to influence the criteria for 'complexity, risk and impact' that would determine which stream is enlivened; 2. The ability for municipal planning authorities to refuse to pursue a Stream 1 amendment if it considers that the amendment would not facilitate the objectives of planning in Victoria or the planning policy framework, or the cost to the council of facilitating the amendment cannot be justified. 3. Stream 1 amendments' 'targeted consultation' not removing the requirement to publish the amendment online. 4. Stream 2 amendments including an optional post-exhibition referral to stream 3 if complicated matters are raised and the planning authority considers they are best heard by a panel. 5. Stream 3 amendments requiring the Minister's delegate to provide the panel with an assessment of the amendment in terms of compatibility with the VPP and Section 4 of the Act. 6. Stream 3 amendments including a stage where the amendment is adopted by the planning authority. 7. All planning scheme amendments requiring prompt decisions by the Minister under S35. 8. All planning scheme amendments being disallowable instruments. 9. Clearer provisions being made for regional planning scheme amendments. 10. Modernising advertising requirements.

Local government welcomes opportunities to simplify, speed-up and otherwise improve the planning scheme amendments (PSA) process. This must of course apply to planning authorities (regardless of which person or body within state and local government the planning authority is), the Minister in their authorisation/approval capacities, and planning panels.

The option for 'three streams' may provide a sound framework for reform, but we request further details and a more developed understanding of the problem that is being addressed.

The reform option may be confounded by the *Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2025*, the planning law elements of which will commence on 25 November 2025 (or an earlier day to be proclaimed). This Act introduces a 'low-impact amendments' stream. It is unclear if stream 1 is a proxy for 'low-impact amendments'. This Act will also provide an option for panels to consider amendments and submissions 'on the papers'. It is unclear if the stream 3 amendments is intended to include the sorts of amendments that could be considered 'on the papers'.

Clarifying the problem

During the DTP workshops on 24-27 February 2025, a statistic often cited was that two-thirds of PSAs are pursued without the notice, submission and scrutiny provisions of Section 19 of the Act. That is, they are mostly approved under Section 20(4). The implication seemed to be that councils were responsible for this proliferation of exemptions from the standard, but we are quite sure that that is not the case: 20(4) exemptions apply mostly to amendments that the Minister is responsible for preparing. Most of these would be changes to the VPP (which Section 4B requires be treated as PSAs) and editorial corrections amendments.

We request the publication of data setting out, in the case of every PSA since 1999:

- The planning authority;
- The amendment type (C, VC, etc);
- The notice pathway (S19, or S20(4), etc);
- An appropriate proxy measure for the size or complexity of the amendment;
- The length of time from request for authorisation to decision on authorisation;
- The length of time from decision on authorisation to commencement of exhibition;
- The length of time from end of exhibition to commencement of planning panel hearings (if relevant);
- The length of time from receipt of planning panel report to amendment adoption or abandonment (if relevant); and
- The length of time from adoption to Ministerial approval (if relevant).

The 'three streams' reform option

Local government welcomes the idea of streaming PSAs by significance. We request further detail and opportunities to influence the criteria for 'complexity, risk and impact' that would determine which stream would be enlivened in relation to classes of amendment. The distinction between stream 1 and stream 2 is particularly unclear.

The reform option should not create an entitlement or expectation that proponent-led PSAs will be taken up by councils. Where site- or precinct-specific amendments are needed and supported by policy, and where the council has the capacity to facilitate the amendment on a cost-recovery basis, the amendment should not reasonably be denied. However, not all site- or precinct-specific amendments will meet this standard, and we do not wish to see undue pressure on councils to prioritise their facilitation over more urgent strategic planning work.

While we accept that the lists of stages under the three streams are likely incomplete, we urge that:

- In relation to 'stream 1 amendments', 'targeted consultation' should not remove the requirement that the amendment be published online. The consistency in approach to all amendments – through online publication – will give legitimacy to all of the streams, and to restrictive consultation programs for stream 1. Such transparency also leads to higher quality proposals given the potential for general scrutiny.

- In relation to 'stream 2 amendments', an optional post-exhibition referral to stream 3 be provided for, in those instances where the planning authority considers that complicated matters arising from the exhibition are best heard by a panel.

- In relation to 'stream 3 amendments', the reinstatement of the planning scheme amendment adoption by the planning authority. Without this stage, the planning authority will still need to be prepare a full assessment of the panel recommendations and provide the Minister with advice; that assessment ought not be shielded from a

public decision-making process. The consequences for community dissatisfaction and disconnection from the strategic planning process would also be significant.

While planning authorities mostly err on the side of upholding planning panel recommendations, there are times where the planning authority should be able to disagree with recommendations in part or in full and advise the Minister as to the reasons for that disagreement. Sometimes, the reasons will be informed by local environmental considerations that the Minister should be briefed about before making a final decision. No clear reason has been given for why this stage should be removed, along with the accountability and transparency that it provides to the strategic planning process.

- In relation to 'stream 3 amendments', there be a requirement that a delegate of the Minister provide the planning panel with a technical assessment of the planning scheme amendment, to set out any concerns about the compatibility of the amendment with the VPP and the objectives of the planning framework (found at Section 4 of the Act). The purpose of the requirement is to establish any concerns by the state government at a time when they can be tested, and reduce the growing tendency of DTP to raise novel policy questions after the panel process has concluded and the planning authority has adopted the amendment. We are very concerned about the denial of procedural fairness to the planning authority and all submitters that is created by post-adoption scrutiny on matters that could have been tested during the panel process but were not.

- In relation to all streams, there be a requirement on the Minister to make decisions promptly. In recent years the major bottlenecks have been decisions under S8A(4) (being a Ministerial decision to authorise a council to prepare an amendment, or indicate that the application requires further review, or refuse authorisation) and under S35 (approval, with or without changes, and subject to any conditions, or refusing approval, of amendments that have been adopted by the planning authority). The 'authorisation' issue is dealt with in another DTP reform option and is discussed in sections 13.4 and 13.6. But the approval stage is not adequately addressed. Just as the Parliament has required faster decisions for parts of the amendment process that councils are responsible for, so too is it important that the Minister and delegates be accountable for the speed with which they make decisions.

Case study: Melbourne City Council

The most recent *Melbourne Planning Scheme Review* in 2023 found that:

- The average time it takes to pursue a planning scheme amendment from beginning to end has grown considerably since 2018;
- Most delays are caused by very slow Ministerial decisions to authorise and approve amendments, but also by long lead times to secure hearing dates with Planning Panels Victoria;
- The delays cause significant uncertainty for developers and workforce planning challenges for the council; and
- Changes in departmental practice may also be a contributing factor, with more thorough reviews of amendments at the authorisation stage resulting in significant conditions, and the re-prosecution of amendments after their adoption despite the planning authority implementing the panel's recommendations.

Planning scheme amendments as disallowable instruments

The reform option refers to a final amendment stage under each of the three streams being consideration of amendments by the Scrutiny of Acts and Regulations Committee (SARC), and tabling of the amendments in parliament. We are not sure of the purpose of giving such prominence to the SARC as the final stage.

A majority of members of the SARC are also members of the party of Government. It is no substitute for the reserve powers of the legislature to disallow amendments – especially amendments that facilitate changes to the VPP – that frustrate the purposes of the principal Act. In an ideal world that power will never need to be exercised, because approved amendments will be procedurally in order and consistent with statewide policy frameworks. But it is the presence of that reserve power that keeps a check on the orderliness and policy consistency of every amendment.

The power of either house of parliament to revoke an amendment (found in Section 38 of the Act) has been available since the commencement of the 1987 Act. Until 2021, the power applied to all planning scheme amendments; thereafter, amendments prepared by the Suburban Rail Loop Authority were exempt. This submission is not the place to make arguments about the merits of the Suburban Rail Loop. We simply observe that the introduction of a dual system of opportunities to disallow amendments has changed the relationship between the legislature and the executive, introduced complexity, and set a precedent that could lead to further exemptions.

We are generally opposed to further exemptions from the option to disallow planning scheme amendments – especially changes to the VPP – because we believe that, as a matter of principle, the legislature should have the ability to debate whether the VPP is giving effect to, or frustrating, the purposes of the principal Act. We believe that this reserve power generates cross-partisan support for the planning system, as it requires the legislature – and not only the executive – to consider what responsible custodianship of the planning system looks like. We also think that the presence of reserve powers gives democratic legitimacy to the planning system and, given the policy directions of some of the other reform options which remove community influence over strategic and statutory planning, questions of democratic legitimacy are not unimportant.

We therefore urge the retention of Section 38 in the new principal Act, ideally in a simpler form that applies to all planning scheme amendments, including and especially all VPP changes. The Government of the day should have confidence that the provision will be rarely if ever be used and that its political program will be carried.

Regional planning scheme amendments

If DTP is seriously exploring opportunities to redefine planning scheme amendment typologies in the principal Act, it should also look at the issue of scale and the practicality of different planning authorities performing different roles.

Sections 8, 8A, 8B, 9 and 9A enable the Minister, councils, councils in relation to adjoining councils, other Ministers and the Suburban Rail Loop Authority, respectively, to be planning authority: the statutory bodies authorised to prepare amendments to planning schemes.

The Section 9 provision to authorise Ministers other than the Planning Minister to be planning authorities in relation to one or more planning schemes is rarely exercised. In lieu of the state government ‘opting in’ to this Section in relation to policy matters that cover multiple local government areas – especially those concerning flooding and coastal erosion – expectations have fallen on individual councils to pursue amendments of regional importance. The current town-by-town, council-by-council approach is a highly inefficient

way to amend planning schemes at the flood catchment or coastal region level, where the catchment or region covers multiple councils. This gives rise to inconsistent controls from one municipality to the next.

The purpose of Section 9 is to deal with such policy matters efficiently. There is nothing in the principal Act stopping the Minister for Water, for example, from being the planning authority in relation to new flood overlays in a catchment that covers 2 or more local government areas.

We would like to see Section 9 and the way the principal Act allocates planning authority responsibilities improved, so that regional (multi-local government area) planning scheme amendment pathways are more frequently taken up with state government appointed planning authorities where logical to do so.

Amendments to Section 9 of the Act could include clarity that it applies to catchment-based and regional planning scheme amendments that cover more than one local government area. Other amendments should provide that, where multi-council amendments of this type are pursued, the affected municipal councils are guaranteed a special status as submitters to amendments and planning panels.

Modernising advertising requirements

Given the link with the reform option relating to 'making notice requirements clear', we provide discussion of this issue in section 13.4.

13.3 Recalibrating the role and conduct of planning panels

DTP reform option	Local government response
Make clear that the role and function of a panel is to provide an impartial review of the amendment, with the panel having discretion over who it chooses to hear from during public hearings.	**Support**, subject to being provided with an opportunity to critique the draft provision.

It is already the role and function of a panel to provide an impartial review of a planning scheme amendment, and so the purpose of the first part of the reform option is unclear.

Where done well, panels provide an invaluable role in improving an amendment and contemplating the consequences of complicated proposals. Too often, however, costs associated with panels are unreasonable, often exceeding the costs to prepare the strategic basis for the amendment in the first place. Reasonable steps to keep the timing and costs of panels proportionate with the complexity and impact of the amendment are welcome.

Any new provisions relating to limiting the rights of interested parties to address panels, or to question expert witnesses, will need to be carefully drafted to avoid the possibility of denying procedural fairness or inviting legal dispute. They will also need to consider the needs of all community members, not only those assisted by counsel.

13.4 Making notice requirements clear

DTP reform option	Local government response
Require planning authorities to design a public engagement plan for transparent, accessible engagement, and allow the Minister to require adherence to this plan as a condition of authorisation.	**Support**, subject to clarification about the interaction of this amendment with SS19-20 of the Act, and noting that this would apply to all planning authorities. Consideration should be given to the creation of engagement toolkits to assist planning authorities.

Where councils are the planning authority, public engagement plans are already established and followed. Embedding these in conditions of authorisation is unlikely to cause any problems, provided that this mechanism is not used to add unreasonable costs to be borne by the planning authority, and does not require unnecessary activities.

The problems with an absence of public consultation on planning scheme amendments is common, however, wherever the Minister is the planning authority, the authoriser and the approver. There was no public engagement prior to the introduction of the new Townhouse and Low-Rise Code via VC267, nor was there public engagement on the expansion of the Development Facilitation Program via VC242. There has been no public engagement on the Act rewrite itself. VPP changes are facilitated by planning scheme amendments: will these now require a public engagement plan?

The relationship between this reform option and Sections 19 and 20 of the Act will be important to consider. Some broad amendments (e.g. those with municipality-wide coverage) that make only moderate changes to policy can be extremely costly to advertise under Section 19. Section 19(1A) provides an ability to opt out of providing notice if the planning authority considers it impractical to notify all property owners individually, but there is much doubt about how and when this provision should apply.

It should be possible, if a planning authority provides a robust community engagement proposal, for the Minister to authorise the amendment and concurrently approve the use of S19(1A) to limit the extent of mail. Such an authorisation would put questions of procedural fairness beyond doubt. Mail is not unimportant, but it has decreased in importance relative to other communication methods.

Requirements to “publish a notice of any amendment it prepares in a newspaper generally circulating in the area to which the amendment applies” (S19(2)) should also be removed. Newspaper advertisement could be one mechanism to create awareness of the amendment as part of a public engagement plan, but often a newspaper advertisement will not be the most efficient and effective way of doing this. The newspaper advertisement requirement is an original provision from the 1987 Act.

Consideration should be given to the creation of engagement toolkits to assist planning authorities. This would be especially helpful for small councils where the cost of planning scheme amendment notice and consultation can be a significant proportion of the council’s operating expenditure.

13.5 Creating more explicit processes for the initiation of amendments

DTP reform option	Local government response
Build on CPLA Bill reforms to develop formalised procedures, statutory timeframes, and cost recovery provisions for proponent-led amendments.	**Support**, subject to being provided with an opportunity to critique the draft provisions.

We support the reform option, subject to being provided with an opportunity to critique the draft provisions.

Reform options should not create an entitlement or expectation that proponent-led planning scheme amendments will be facilitated. Where there is clear evidence and strategic justification for site- or precinct-specific amendments and these are generally supported by the Planning Policy Framework, and where the council has the capacity to facilitate the amendment on a cost-recovery and staff capacity basis, the amendment should not reasonably be denied. However, not all site- or precinct-specific amendments will meet this standard, and we do not wish to see undue pressure on councils to prioritise their facilitation over more important strategic planning work.

If proponent-led planning scheme amendments do become an entitlement, the integrity of the VPP will be threatened. Practice since 1996 has been to ensure that the section 2 uses in zones allow a broad range of uses; in part, this is to avoid the need for site-specific controls and amendments. The proliferation of specialised controls for individual sites would undermine this strategy and the accessibility, and public understanding, of the planning system.

In the last four years there has also been the introduction of new Ministerial planning approval pathways that overcome some land use restrictions in zones, and the *Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2025* will soon introduce provisions for the Minister to take on site-specific planning scheme amendments where the council has determined that it should not.

The presumption in law should therefore be, in relation to any individual site or precinct, that the controls and policies of the planning scheme in place at the time will remain. The presumption should not be that the existing controls can be easily changed on request.

13.6 Providing additional structure and statutory timeframes for authorisation of amendment

DTP reform option	Local government response
Prescribe criteria for Ministerial decision-making at authorisation (including consistency with state plans) as well as timeframes for further information requests and final decision.	**Support**, subject to the authorisation criteria including timeframes, and being provided with an opportunity to critique all of the draft provisions.

The reform option has the capacity to greatly assist councils in work-planning. Current uncertainty around Ministerial or delegated Departmental timeframes for progressing amendments – especially at the 'authorisation' and 'approval' stages – can create significant inefficiencies for developers and councils. Delays also significantly erode community trust in the planning process.

Many councils have experienced frustration with decisions by Planning Ministers and delegates under S8A of the Act. For example, while sub-section (4) allows the Minister to decide that a request to prepare a planning scheme amendment can 'require further review', sub-section (5) does not require reasons to be provided, let alone detailed reasons. At times, decisions to require further review are, in effect, decisions to delay an amendment indefinitely and get around the '10 business days' decision-making timeline in sub-section (7). The lack of clarity and accountability can cause significant disruptions for the planning authority.

Many councils have also experienced frustration with securing authorisation due to DTP requirements that certain authorities first provide express support for the amendment. If support is not in-principle support (with the authority reserving the right to make submissions during exhibition and panel to make further improvements), and instead is support of the kind that demands very detailed modelling of future development to meet all of the authority's detailed concerns, the planning scheme amendment process can be significantly delayed before Ministerial authorisation has even been provided. This can also be procedurally unfair to submitters on the amendment once authorised and exhibited: they may not know how the 'pre-authorisation' negotiations have already locked in a particular way of expressing controls. The only efficient way of addressing this problem is for DTP to clarify the role of, and support, authorities to make appropriate requests and decisions at this 'pre-authorisation' stage.

We would like to see more expansive reasons for decisions being provided, so that the basis for refusing, approving or conditioning work by councils can be clearly understood. At the same time, the decisions and reasoning need to be applied consistently and reasonably to all planning authorities.

If the reform option creates new criteria and timeframes for Ministerial and delegated decisions that set standards that allow the Minister to exempt themselves from meeting those standards, decisions to exempt should *also* be accompanied by published reasons.

Separately, we would like to see continued improvement to ATS Authoring (Keystone), which remains insufficiently user-friendly. We also propose that amendment progress on 'planning scheme amendments online' provide further detail on how amendments are tracking, how recently the status changed, and how recently the page was reviewed, to further improve accountability.

13.7 Summary

While there is not enough detail provided to know if the reform options, taken together, will provide a benefit to the planning system without compromising administrative efficiency, transparency and accountability, and community engagement and public support, the overarching directions should be explored further.

Recommendation 14

That the reform options in the 'planning scheme amendment process' theme be pursued subject to the conditions set out in the submission, after first exploring and co-designing the new provisions with planning system administrators in local government.

14 Reforming planning permit processes

14.1 What is being proposed

The five reform options put forward by DTP under the theme about **the planning permit process** are:

(1) Planning permits – Proportionality of the process. (*Reform option:* Implement three pathways for planning permit assessment that enable procedural steps and timeframes that are proportionate to the risk and complexity associated with the permit application. This will also reduce the number of discretionary decisions about process that a responsible authority must make.)

Stream 1 Simple, low risk proposals	**Stream 2** Assessed against codes/policies	**Stream 3** More complex, impact assessed
• A code-based assessment pathway, similar to VicSmart • Not required to be assessed against policy • No public notice, no referral • **Examples (in a General Residential Zone)*:** Single dwellings (including additions, alterations and small second dwellings), two dwellings on a lot *n.b. subject to codification of ResCode*	• For applications that depart from codes or propose something that is expected but not codified • Assessed against relevant codes, guidelines and policy • No public notice, no referral, but longer timeframe for assessment than under stream 1 • **Examples (in a General Residential Zone):** Variation of any codified requirement in Stream 1, subdivision <10 lots that is compliant with ResCode	• The presumed default assessment stream – mirrors existing process • Higher level of assessment requiring balancing of policy and determining appropriateness against the controls in place • Referral, Public notice, objections • **Examples (in a General Residential Zone):** Most other development applications, any other use application

(2) Limiting consideration of objections. (*Reform option*: Allow responsible authorities to reject objections deemed frivolous, vexatious or irrelevant, and require that objections must be submitted by the person objecting (with the exception of petitions.)

(3) Imposing controls on requests for further information (RFIs) while preserving ability to raise concerns. (*Reform option:* Prescribe the form and content of RFIs to ensure there is a clear link to the assessment being undertaken, while enabling a new concerns letter process that does not automatically stop the clock.)

(4) Seeking to reduce delays associated with referral authority responses. *(Reform option:* Prescribe a timeframe for sending of referrals, make clear that failure of a referral authority to respond within the required timeframe is deemed 'no objection', and establish a fee sharing process.)

(5) Establishing a more proportionate approach to permit amendments. *(Reform option:* Establish three streams for permit amendments, in line with the permit streams.)

14.2 Planning permits – Proportionality of the process

DTP reform option	Local government response
Implement three pathways for planning permit assessment that enable procedural steps and timeframes that are proportionate to the risk and complexity associated with the permit application. This will also reduce the number of discretionary decisions about process that a responsible authority must make.	**Support in principle**, subject to: 1. First defining the problem clearly with system administrators; 2. Co-designing the mechanism for measuring 'proportional risk and complexity' and defining streams with planning system administrators in local government; 3. Not simultaneously implementing the 'structure and content of the VPP and planning schemes' reform options; 4. Consideration of the cumulative effect of the reform option on the integrity of the VPP and the purposes of the principal Act; 5. More realistic 'statutory clock' timeframes for the 'stream 3' approval pathway so as to facilitate higher quality outcomes and minimise the risk of procedural defect; 6. Modernising the notice requirements; and 7. First building and applying one statewide applications and permits system for all applicants, responsible authorities, referral authorities, objectors and observers to use.

Local government welcomes opportunities to simplify, speed-up and otherwise improve the permit application and approval process. This should not be conflated with support for an extension of past approaches to codes and VicSmart provisions; simply replicating the complexity inherent in the design of those provisions will not lead to effectiveness, efficiency and economy.

The option for 'three streams' based proportionally on risk and complexity may provide a sound framework for the future. If it is to succeed, system designers and administrators will need to work together to ensure careful consideration of the principal Act and the VPP are made together.

We request further details and a more developed understanding of the problem that is being addressed.

Clarifying the problem

A comprehensive audit of permit types and timeframes should be conducted by the state and councils together to inform any reform options. Choosing the solution before understanding the problem – especially when so many other reforms have already been agreed but are yet to commence and be measured (see sections 5.5 and 5.7 of this submission) – will create unnecessary complexity and risk unintended outcomes.

Another Victorian Auditor General's audit of the planning system is now timely as the government is embarking on a review and rewrite of the entire system. This is discussed in section 6 of this submission.

Any new audit should extend to the new approval pathways (where applications or permits are exempt from standard provisions in the principal Act, especially the new pathways facilitated by particular provisions at clauses 53.19 to 53.24) and consider the ways information is being managed across all parts of local and state government.

The 'three streams' reform option

Streaming permit processes based on risk and complexity is generally supported, however we believe that much more work is required to accurately define the three streams. We request further detail and opportunities to influence the criteria for 'risk and complexity' that would determine which stream would be enlivened in relation to classes of permit application, and further detail and opportunities to influence the definition and scope of the three streams.

In the draft reform option, both streams 1 and 2 appear to rely on codification, while stream 3 is a very broad category for 'everything else'. We suspect that this approach will be unlikely to provide a proportional treatment of application types, but we cannot be sure as no information, examples or data explaining the strategy for the three streams has been released. We would also like to understand where applications processed through the Development Facilitation Program fit within these streams.

The choice to make stream 1 code- and VicSmart-reliant rather than move to a mechanism where very simple and unobjectionable planning approval types are removed from the system altogether appears to be a missed opportunity. If an application of such simplicity only warrants a straightforward assessment that requires no discretion on the part of the assessor, it is surely the sort of deemed approval that could be provided without a permit. More and more VicSmart-like provisions will only over-complicate the system and preoccupy qualified planners with matters that do not require their professional judgment.

Subject to better understanding the problem and being part of the deliberations about system design solutions, we cautiously suggest that 'stream 1' should be targeted to 'very simple, very low-risk proposals' that can avoid permit trigger altogether. The legitimacy of and trust in the system would, of course, require that the criteria be genuinely 'very simple' and 'very low-risk'.

We caution against 'stream 2' applications considering matters that are not compliant with standards in codes while also extinguishing notice requirements entirely.

Given the intention of the government to review and rewrite the principal Act, new permit streams should be considered in the context of reforming the Act and the VPP together. If that does not occur, and streams are arrived at through piecemeal changes to the VPP (perhaps recent amendments to the VPP are an indication that more of this will come), the obvious risk will be the proliferation of VicSmart-like provisions being attached to the VPP with Zones becoming increasingly cluttered with language to define which application types are captured and which are not. This would simply repeat past mistakes with planning system reform, while inviting more and more legal dispute and tribunal or court directions about how applications are to be classified.

Only the principal Act can provide an effective framework for the efficient allocation of applications to streams and the resolution of dispute about allocation.

The reform option should not open the door to an over-application of new codes. There is nothing inherently wrong with code-based approval pathways, but recent trends towards one-size-fits-all codes that capture more than just the simple application types have generated unintended consequences, such as the significant diluting of ESD provisions and policies. This illustrates inadequate strategic justification, modelling and consultation for programs to develop the new codes. It is very difficult to amend codes once they are in place, and far better to test them comprehensively with local government before they are introduced.

If the reform option is pursued, a standard program of development, testing and consultation on any future new codes should be established. (This program will also need to consider emerging AI, machine reading and automation applications – we have more to say on this in section 6.6.)

The statutory clock

The opportunity to genuinely align the VPP and principal Act with different streams of permit application based on 'risk and complexity' would allow for a range of consequential benefits. For example, if timeframes for 'stream 3' are more realistic, the instance of 'failure to determine' appeals to the tribunal should reduce. (We note that the government, like councils, cannot feasibly hold to the 60 day 'statutory clock' timeframe in relation to the largest and most complicated infill permit applications.) An over-reliance on permit conditions that push matters to 'secondary consent' should also reduce.

Any streaming of permits should therefore be aligned to a review of the 'statutory clock'. Such a review should consider:

- Starting the clock at the point that a complete application has been lodged. 'Completeness' should, for codified pathways, be subject in the first instance to a straightforward verification process.
- A mechanism to allow for minor technical errors in an application to be made without stopping the clock.
- Pausing the clock during the statutory notification period.
- Longer overall timeframes for complicated proposals, e.g. 90 days if certain thresholds for application significance are unarguably met.
- The ability to place applications on hold by mutual agreement between the responsible authority and applicant.
- More substantial and comprehensive reforms that balance applicant and assessor interests.

The inefficiency created by rushed decisions must not be overlooked in any review of the statutory clock.

Impact on the courts

If more and more significant and complicated applications become the subject of code-based planning approvals with applicant or third party appeal rights extinguished, we do not consider that that will necessarily reduce legal dispute. The consequence of a permit streaming framework that extinguishes most opportunities to appeal decisions at the tribunal will be to push dispute from the tribunal to the Supreme Court.

We note that 'potential applicant or third party appeal' has not been included as a step in stream 3. If this implies the removal of appeal provisions altogether, the consequences must be considered, including the erosion of the social licence of the planning system. We would prefer to see a properly-resourced tribunal than the removal of third party rights in relation to large and complicated proposals. Third party notice and review should stem from the complexity of the application, not from a capitulation that tribunal efficiency cannot be improved.

Modernising the notice requirements

It would be a lost opportunity if permit streaming were to be pursued without also modernising and aligning the notice requirements. Due to the complexity of notice, and the usual treatment of notice, objection and review as a package, notice requirements have often been extinguished where they ought not to have been, and have been retained where

the administrative burden exceeds the relative significance of the application. A new approach should be pursued, with system designers and administrators working together to consider options.

New communication methods should be considered in any such review.

One matter that ought to be considered is an amendment to Section 52 of the Act to provide that, where there is an obligation to notify "owners… and occupiers of allotments or lots adjoining the land to which the application applies" of an application, and the adjoining land is a strata titled property, notice to the owners corporation would suffice. This would allow for the reinstatement of third party notice (if not necessarily third party appeal – that is a separate consideration) in urban areas targeted for densification. Too often, notice has been extinguished in these areas because of the administrative burden involved in providing notice to every individual owner and occupier, the fear of associated procedural error, and the bundling of notice rights with appeal rights.

Information management

The proliferation of approval pathways, including through new and novel particular provisions in the VPP, is the cumulative effect of decisions by Planning Ministers over time. Most of the new pathways escape public scrutiny and rely on new systems to store applications, permits and related documents. Meanwhile, the 79 councils as responsible authorities each choose their own information management systems in relation to the approval pathways they have responsibility for. The inefficiency of this system as a whole has led to the inability to effectively measure its performance. This in turn has led to the pursuit of planning system efficiency improvements that are unsupported by evidence.

As the government is now embarking on a complete review and rewrite of the Act and, by extension, the planning system, now is the time to plan one statewide applications and permits system for all applicants, responsible authorities, referral authorities, objectors and observers to use. Adequate resources will need to be allocated to ensure that this project is completed effectively and efficiently. We note that NSW has recently moved towards a similar model, with the 'NSW Planning Portal' expanding to take in most types of permit application.

An alternative 'three streams' approach

We provide an alternative approach in section 6 of this submission.

14.3 Limiting consideration of objections

DTP reform option	**Local government response**
Allow responsible authorities to reject objections deemed frivolous, vexatious or irrelevant, and require that objections must be submitted by the person objecting (with the exception of petitions).	**Support in principle** subject to being provided with an opportunity to critique the draft provision.

We support the reform option in principle subject to being provided with an opportunity to critique the draft provision. We support the concept of allowing responsible authorities to reject objections, rather than requiring them to do so, to avoid unnecessary administrative burden.

Provisions will need to be carefully drafted to define 'frivolous, vexatious or irrelevant' in a precise way that avoids procedural unfairness. We think that it may be difficult to do this in a way that avoids the risk of new types of legal dispute.

If the purpose of the reform option is to quash instruments that trigger third party appeal (i.e. under stream 3 only), it may be better to approach the issue in a holistic fashion when reviewing the interrelationship of permits, objections, third party appeal rights and the tribunal's duties together.

The tribunal should also be given the power to dismiss applications that have no prospect of success.

14.4 Imposing controls on requests for further information (RFIs) while preserving ability to raise concerns

DTP reform option	Local government response
Prescribe the form and content of RFIs to ensure there is a clear link to the assessment being undertaken, while enabling a new concerns letter process that does not automatically stop the clock.	**Support in principle** subject to being provided with an opportunity to critique the proposed provisions and prescribed forms, and a more thorough review of the statutory clock and application provisions.

We support the reform option in principle subject to being provided with an with an opportunity to critique the proposed provisions and prescribed forms. The reform option could be inefficient and an administrative burden if not designed well.

There is a risk that, if the RFI process is standardised, the ability to request contextual information will be limited. There are occasions when contextual information is necessary to make an orderly and fully-informed decision (and which a developer will wish to provide for the same reason), for example in relation to potentially contaminated land, infrastructure co-ordination, land assembly and heritage significance.

The reform should not be piecemeal: a more thorough review of the statutory clock is needed, and provisions to ensure complete applications are lodged where it is possible to do so should also be made. We discuss these matters in section 14.2.

14.5 Seeking to reduce delays associated with referral authority responses

DTP reform option	Local government response
Prescribe a timeframe for sending of referrals, make clear that failure of a referral authority to respond within the required timeframe is deemed 'no objection', and establish a fee sharing process.	**Support in principle** the prescribing of timeframes for sending referrals, subject to those timeframes not preventing the vetting of information ahead of referral. **Oppose** the 'no objection' deeming provision. **Oppose** the establishment of a fee sharing process. This is no substitute for a necessary comprehensive review of all fees and the consideration of a new structure that provides reasonable cost recovery and fairness.

This reform option, as proposed, will likely lead to undesirable consequences. A more thorough review of the referral mechanisms should be conducted instead.

We support in principle the prescribing of timeframes for sending referrals, but only if those timeframes do not prevent the vetting of information ahead of referral – and if they are accompanied by greater clarity about when referrals are to be made. The Act, in combination with the Regulations and VPP, already provides difficulty in knowing the extent of what should or should not be referred to a referral authority, with 'over-referral' the safe option. Limiting the time available to critically consider how a referral can be framed will inevitably lead to inefficient framing. This in turn will not assist referral authorities to respond efficiently.

The 'no objection' deeming provision is opposed outright. Referral authority mechanisms have a purpose, most often to ensure that the responsible authority is equipped with the technical information necessary to make conditions that will facilitate human safety and avert environmental catastrophe. The solution to improving referral authority response times is to resource referral authorities adequately, not to deem that the referral authority has declared that a development proposal that poses risks to human life is unobjectionable.

The 'fee sharing process' is also opposed outright. This cannot be designed other than in a way that reduces revenue to the responsible authority, eroding cost recovery. Again, this is no substitute for the proper resourcing of referral authorities. Councils cannot subsidise state government departments and agencies that act as referral authorities.

Recent changes to the particular provisions have made the Minister the responsible authority for certain classes of application instead of councils, for classes that still rely on councils to make a near-complete assessment of the proposal in order to furnish the Minister with advice and a list of permit conditions. The fees, collected by the Minister, are not being shared with councils in this instance.

What could be done instead?

The 'reform option' is no substitute for a full review of all planning fees and the resourcing of referral authorities. As the government is embarking on a full review and rewrite of the Act and planning system, a comprehensive review of planning fees is timely. This review should be undertaken by a 'subsidiary committee' as described in section 6.3.

14.6 Establishing a more proportionate approach to permit amendments

DTP reform option	Local government response
Establish three streams for permit amendments, in line with the permit streams.	**Support in principle**, subject to the same considerations as apply to the three streams for permit applications.

We support the reform option, subject to the same considerations as apply to the three streams for permit applications (see section 13.2).

14.7 Limiting speculation

As the government intends to pursue a complete review and rewrite of the Act and, by extension, the planning system, now is the time to consider what changes to the provisions in the principal Act, if any, should be pursued to limit land-banking and the awarding of planning permits that are not intended to be acted on (but which increase the value of the land).

14.8 Summary

While there is not enough detail provided to know if the reform options, taken together, will provide a benefit to the planning system without compromising administrative efficiency, transparency and accountability, and community engagement and public support, the overarching directions should be explored further.

Recommendation 15

That the reform options in the 'planning permit process' theme be pursued (with the exception of the 'no objection' deeming provision for referrals, and the proposed fee sharing arrangement, which should be abandoned) after first co-designing the new provisions with planning system administrators in local government.

15 Other frameworks requiring review

15.1 Compliance and enforcement

Enforcing planning schemes and permit conditions is an important duty of councils, necessary to ensure the legitimacy of the planning system. Resourcing constraints on councils and an ever-changing regulatory environment can make planning compliance difficult to communicate and enforce.

Councils do their utmost to enforce the scheme of the day. However, the array of enforcement issues continues to grow and includes general amenity like noise and odour, vegetation removal and illegal demolition. Each enforcement case can present complex individual challenges. Limited time is generally available, in particular in small councils where individual planning officers hold statutory, strategic and enforcement responsibilities.

More broadly, challenges are presented as the Planning Minister increases their responsible authority footprint across the Victorian planning system. Councils, which usually remain the planning enforcement body, must enforce permits issued by the Minister for decisions that may not have considered local contexts, challenges or risks. The state's propensity to unilaterally amend planning schemes without consultation with local government's planning and local laws enforcement teams risks unintended consequences and expense.

Local enforcement priorities and challenges directly influence how permits are granted and conditions are written. A clearer system-wide understanding of the enforcement challenge would likely reduce current risk-averse approaches.

Current enforcement settings

The framework for undertaking compliance is at best confusing and at worst unwieldy, and is not disincentivising planning scheme breaches. The current Act does not provide an option for enforcement officers to issue a "Notice to Comply' or 'Stop Works' notice, unlike other Acts. The cumbersome process of seeking an interim enforcement order, coupled with the risk of the applicant (usually Council) potentially having to give undertakings as to damages when making the application, means that Councils are increasingly avoiding them.

Councils do have a range of options when managing a planning enforcement matter. They can issue an infringement, issue a charge and summons via the Magistrates Court or seek an enforcement order through VCAT. However, for more complex or serious planning matters, Council must seek a prosecution through the Magistrates Court and then a remedy for the breach through an enforcement order at VCAT.

In recent years there have been several high-profile cases where illegal demolition, vegetation removal and amenity breaches have led to unacceptable outcomes to the community. These cases highlight the need for a review and update of enforcement approaches and penalties as a real deterrent. Current fines are not proportionate with the social, environmental and economic damage that some breaches cause, nor do they provide an adequate deterrent, and nor do they cover council's enforcement costs.

From enforcement to prevention

The MAV and councils have identified a number of options to reform enforcement of the planning scheme and encourage compliance from the outset. Broadly, this could include expanding penalty types and severity for non-compliance by:

- Introducing a tiered compliance process for breaches, to enable clear compliance pathways for enforcement, with the Act clearly defining minor, moderate and significant breaches.
- Appropriately limited but well defined powers to stop work and enter sites, especially where irreparable environmental and other damage is underway.
- Notices to Comply carrying automatic financial penalties for failure to comply. This may assist Council in stopping matters before they proceed to Court or VCAT.
- Removing property rights previously granted under the Act for severe breaches.

Consideration should be given to granting VCAT consolidated powers to impose penalties and cancel permits along with enforcement orders, in order to limit unnecessary delays and costs in the interests of all parties.

15.2 Fees and cost recovery

The MAV submission to the Victorian Parliamentary Inquiry into Local Government Funding and Services[51] described the increasingly constrained fiscal environment councils are operating within. Yet, the range of services and responsibilities undertaken by local government has never been greater or more complex. The situation is worsening under ongoing cost-shifting to local government.

Cost-shifting takes numerous forms but in each case contributes to the erosion of council's capacity to perform their roles. In areas such as building regulation the Victorian Government demands significant responsibilities of councils without a revenue stream to resource them. In planning, an increase in the number of application types that make the Minister the responsible authority but which still require councils to conduct full assessments of proposals – without collecting the fee – have also been imposed (we discuss these in sections 5.7). New proposals to further erode fee revenue have also emerged (see section 14.4).

In adding complexity to the system, the Development Facilitation Program has undone the original premise of the current statutory fee schedule - that the bigger fees would help offset high workload smaller fee applications. Councils are now losing their biggest fee paying applications to the Planning Minister and DTP. The MAV understand that loss of income to Councils because of the Development Facilitation Program has cost some councils up to 40% of their statutory planning fee revenue.

For planning permit applications, fees must be adequate for the responsible authority to perform the duties required of it.

We understood the state was looking to make legislative change to create a pass-through mechanism from the State to the relevant council to reflect the work councils still need to undertake where council is not the responsible authority. It appears that this work was abandoned.

Without legislation, councils will look to other mechanisms and agreements to receive acceptable revenue for the work they do on behalf of the state. None of these mechanisms will be as efficient to local or state government as an update to the schedule of fees. A full review of planning fees should be conducted as part of comprehensive planning system reform.

[51] MAV, 2024, submission to the Victorian Parliamentary Inquiry into Local Government Funding and Services.

15.3 Heritage

The size and capacity of Victoria's heritage consultancy industry is limited and it struggles to meet the strategic planning and statutory referral demands of 79 councils, state government and developers - even if the resources were available to secure their services.

Councils have consistently called for a refresh of Planning Practice Note 01. The current version (August 2018) does not expressly support or define the contemporary grading nomenclature preferred by heritage consultants and Planning Panels Victoria ('significant', 'contributory' and 'non-contributory'), giving rise to subtly different definitions of these terms from council to council. This does not assist in the easy understanding of the local heritage framework. A review of PPN01 may result in a more accessible framework while potentially also reducing the size and complexity of heritage studies.

The Heritage Council of Victoria's State of Heritage Review[52] (2020) makes a number of recommendations to meet challenges in maintaining the local heritage framework.

15.4 The Regulations

Many of the DTP 'initial review' reform options require changes to *Planning and Environment Regulations 2015*. The review of the Regulations must form part of the current review and be part of a holistic review of the system as described in section 6.

We anticipate that the reform options that would necessitate changes to the Regulations are:

- Requiring scheme amendments to be consistent with state and regional plans (see section 12.2)
- Planning scheme amendments – Proportionality of the process (see section 13.2)
- Making notice requirements clear (see section 13.4)
- Creating more explicit processes for the initiation of amendments (see section 13.5)
- Providing additional structure and statutory timeframes for authorisation of amendments (see section 13.6)
- Planning permits – Proportionality of the process (see section 14.2)
- Imposing controls on requests for further information (RFIs) while preserving ability to raise concerns (see section 14.4) and
- Seeking to reduce delays associated with referral authority responses (see section 14.5)

Recommendation 16

That the reform program ensures that the other frameworks enabled by the Act are adequately reviewed by state and local government planning administrators working together, before consolidating updated provisions into the new Act.

[52] Heritage Council of Victoria, 2020, *State of Heritage Review: Local Heritage*

MAV would be pleased to provide clarification on any information in this submission. For further information, please contact James McLean, Planning and Sustainable Development Lead, at jmclean@mav.asn.au

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