Submission on the Draft Mid-Rise Code

October 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

The Municipal Association of Victoria acknowledges the Traditional Owners of Country throughout Victoria, and recognise their continuing connection to lands, waters, and culture. We pay our respect to Elders past and present who carry the memories, traditions, cultures, and aspirations of First Peoples, and who forge the path ahead for emerging leaders.

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This submission has been prepared by the Municipal Association of Victoria (MAV). The MAV is the statutory peak body for local government in Victoria, representing all 79 municipalities within the state.

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1 Executive Summary

This submission provides feedback on the design and operation of the Department of Transport and Planning's (DTP) draft Mid-Rise Code[1].

The MAV's submission critiques the proposed operation of the Code and provides recommendations by:

- Ensuring new provisions can meet their policy objectives
- Strongly opposing the significant erosion of local Environmentally Sustainable Design (ESD) policies through the government's current codification model, despite elevation of these matters in the *Plan for Victoria*
- Resisting the over-reliance on exemptions from important decision-making criteria, to give effect to the findings and recommendations of the Parliament's Select Committee on Victoria Planning Provisions Amendments VC257, VC267 and VC274 (the Select Committee)

The department's consultation is being undertaken during a period of significant and broad reform to Victoria's planning system, including imminent changes to the *Planning and Environment Act 1987*.

The Mid-Rise Code remains an opportunity to align residential assessment with robust urban design, Environmentally Sustainable Design, and improved liveability outcomes, but this can only be achieved if reasonable discretion and variation is possible. For this to happen, the blunt mechanism of "switching off" local policy must be avoided.

The MAV submission does not seek to provide technical detail on the standards but rather focuses on the Code's regulatory design.

The Council Alliance for a Sustainable Built Environment (CASBE) has provided a detailed submission on the role of local ESD policy and elevating design quality from a sustainability and operational cost perspective. CASBE is auspiced by the MAV and we commend their submission to Government.

Individual council submissions will provide detailed, local contextual analysis of the proposed standards. We trust the department will consider the council submissions closely, as ultimately it is up to the councils to implement the standards and work with the local development community on mid-rise applications in their municipalities.

Our recommendations as summarised below and explained in detail in this submission.

Recommendations
1. Ensure comprehensive decision-making criteria and guidance
2. Embed ESD local policy into the standards
3. Embed design quality
4. Measure performance and outcomes
5. Temporary measure: Switch on important decision-making considerations
6. Temporary measure: Replicate this approach in Clause 55

[1] *Mid-rise Standards – Consultation Draft*, August 2025, Department of Transport and Planning

2 Introduction

The MAV welcomes this opportunity to provide a submission on the Mid-rise Code, with reference to the document titled *Mid-rise Standards Consultation Draft (August 2025)*.

The MAV has long been involved in initiatives that seek to broaden and lift good apartment and mid-rise development design. This work and engagement includes:

- In 2016 the MAV and several councils joined a Local Government Working Group to test measures for the Better Apartments Design Standards (BADS) and later made a submission to the 2017 public consultation. We urged the Victorian Government to introduce leading-practice standards, noting Victoria lagged behind other jurisdictions. We welcomed the BADS when implemented, as well as the 2021 updates and Apartment Design Guidelines for Victoria
- In October 2021 the MAV submitted to and appeared before the Parliamentary Inquiry into Apartment Design Standards. Many of our recommendations were supported in the Committee's final report. The DTP has since committed to improving apartment design and neighbourhood quality and ongoing engagement
- Through CASBE, we have supported the development of Environmentally Sustainable Development (ESD) provisions. CASBE has driven the introduction of 28 local planning policies requiring new buildings, including mid-rise and apartments, to address ESD, with objectives consistent across participating councils
- Today we are a member of the DTP's Technical Reference Group, along with several select councils and other stakeholders, for the Mid-rise standards review undertaken in the context of implementing the Victorian Government's Housing Statement (2023) and the Plan for Victoria (2025)

Councils have generally supported the performance-based system that have guided apartment and mid-rise dwelling assessments to date, while offering many ideas about how this framework can be improved.

The performance-based system is now being replaced with a deemed-to-comply code. The reasons for this change are not grounded in a clear evidence base, however the stated purposes of the new mid-rise code are understood as to:

- "simplify the delivery of well-designed homes in well-serviced areas where planning approvals can be complex"
- "provide greater clarity on development and amenity expectations for residents, councils, industry, and the community"

The MAV and councils are not opposed to the codification of development typologies, provided that any new codes be developed carefully, with a clear strategic purpose, so that all planning system users can understand how the code will produce satisfactory outcomes regardless of highly variable local contexts.

Government policy responses should not only be assessed by their stated aims, but also by their likely effects. The regulatory impact of policy responses on both applicants and the council's planning administration and regulation must be considered.

In the absence of any economic or built form modelling, it is uncertain whether the Code's stated purposes will be achievable under the draft standards proposed. We

hold significant concerns about the unintended consequences that arise from over-simplification and excessive exemptions of important planning considerations.

In supporting the stated purposes of the Code, and noting that council planners will be the primary administrators of any new provisions, we want to be confident that planners will have the tools to lift mid-rise building standards to meet the current and future housing needs of every community, while providing clarity for applicants and neighbours.

The development of the Mid-Rise Code has closely followed implementation of Amendment VC267, which changed the way proposals for two or more dwellings on a lot up to 3 storeys are assessed by introducing the Townhouse and Low-Rise Code at clause 55. The proposed Mid-Rise Code adopts the same regulatory design as the Townhouse and Low-Rise Code. Specifically, the exemptions imposed on applicants and decision-makers are identical, as is the deemed-to-comply mechanism.

The MAV's concerns about the design of clause 55 and its impact on public trust are well documented:[2]

> The administrative burden associated with VC267 remains significant. Some councils have had to find additional resources to field questions and concerns from applicants and third parties, to explain why the existence of third party appeal rights is unknown until late in the assessment, and why objections written by third parties in good faith may have been disregarded once it was established that third party appeal rights are indeed exempt. This inefficiency was not adequately considered in the design of the new clause 55, was not the subject of proper consultation with councils, remains a significant problem, and has eroded public trust and confidence in government.

We understand that DTP has committed to a residential standards review for Clauses 54, 55 and now 57 and likely Clause 58, to be complete in mid-2026. While the MAV is disappointed that the six-month review of Clause 55 has been subsumed into this broader review, we strongly support the broader review.

However, if the Mid-Rise Code is introduced without integrating the Select Committee's findings, councils, industry and communities face another round of regulatory disruption.

Councils report inconsistent application trends, weakened sustainability outcomes, and reduced design quality due to confusion around new standards, poor data tracking, and limited enforcement. Fragmented interpretations and inadequate guidance have further hindered effective implementation. This will undermine the government's commitment to reforming the planning system with the aim of providing greater certainty.

[2] *Victoria's Housing Statement - Two Years On*, MAV sector brief. See also MAV submission to Legislative Council Select Committee inquiry into Victoria Planning Provisions amendments VC257, VC267 and VC274.

3 Response to the Mid-Rise Code consultation draft

The proposed Mid-Rise Code extends the codified, deemed-to-comply model introduced under VC267 into a more complex housing typology.

While councils recognise the intent to streamline processes and improve housing supply, the proposed changes in the new Mid-Rise standards, like those in the Townhouse and Low-Rise Code, risk undermining the ability of councils to balance environmental sustainability, managing hazards and risks, as well as advocating for high-quality built form outcomes and the right places for density as objectives in planning.

The Mid-Rise standards are proposed to operate under a 'deemed-to-comply' model that switches off the Planning Policy Framework, the purposes of the Zone, the decision guidelines at Clause 65, the requirements of Section 60(1A) of the Act and third-party appeal rights – where the standards are met.

This mirrors VC267's intent to streamline assessment and give applicants certainty. However, it also raises the same concerns about risks to human life and health, and the environment, highlighted by the Select Committee, MAV, councils, the PIA and others who made submissions to the committee.

Ongoing changes to the planning system that limit local planning authorities from balancing statewide objectives, environmental constraints and local policy, along with limiting public participation, will likely remove the potential to achieve social licence for the sort of transformative urban change the government wishes to achieve. These changes are also already creating significant administrative inefficiency within council planning departments.

With third party rights on individual planning applications now frequently exempt, and changes to the VPP frequently made without public consultation, it is local government planning professionals that maintain the social licence of the planning system today.

3.1 Responding to local and regional context

The MAV is disappointed that the approach implemented at clause 55 through amendment VC267 has now set a precedent for other scales of residential development at clause 54 and draft clause 57.

The MAV is opposed to switching off local policy in favour of a "deemed-to-comply" model without sector-wide consultation that:

- identifies and explains, supported with evidence, the problems to be resolved and the improved outcomes sought by a deemed-to-comply approach
- provides the modelling and analysis undertaken explaining what this means for future development. For councils, this means less scope to apply local policy settings on sustainability, good design, requiring density uplift and liveability in favour of uniform standards that cannot reflect the diversity of communities across Victoria

Councils have invested time, money and community good-will in developing and implementing strong local policy. This work is now largely undermined. While we acknowledge that other areas may benefit from a baseline uplift, we consider any

uplift would be constrained as the likely locations for this typology of development will be those with strong Environmentally Sustainable Development (ESD) and urban design policy that will be diluted under the deemed-to-comply model.

Every local ESD policy in Victorian planning schemes underwent a very intensive process of scrutiny and assessment. In every case, Planning Panels Victoria has found these local policies to be sound, reasonable and justified. The 'switching off' of these policies under a Code that has undergone no such scrutiny and assessment cannot be supported.

Exemptions from and the sidelining of local policy must not become the default setting of planning reform. A Code that overrides local policy and removes community input risk locking in low quality outcomes and homes with needlessly high cooling and heating costs at a time when we should be striving for something better. For the Mid-Rise Code to succeed, it must build on the Victorian planning system's foundations: a principle-based foundation, flexibility to allow contextual responses informed by strong local policy, and robust decision guidelines.

The MAV has consistently warned that this "levelling down" effect impedes council's ability to lead on innovation, incentivises lower quality applications and risks regulatory fragmentation where overlays and schedules are the only tools left to lift design standards. Even then residential zone schedules are only permitted now where there is a less stringent approach beyond a minimal baseline.

3.2 Lifting Environmentally Sustainable Design standards

The MAV opposes in the strongest possible terms the significant erosion of local Environmentally Sustainable Design (ESD) policies through the government's current residential codification model. As discussed in detail in the following sections of this submission, the proposed 'deemed-to-comply' model 'switches off' local policy, including ESD policy.

We must address Victoria's housing challenges without locking in future risks, like poor environmental performance and a lack of climate resilience.

The 28 local government areas with local ESD policy, supported through CASBE, have experienced a lowering of standards of environmentally sustainable design than would have otherwise been required. This is unacceptable. These 28 council areas represent 67% of Victoria's population and the vast majority of the state's residential development.

The Built Environment Sustainability Scorecard (BESS) was developed to help applicants and councils meet these local ESD policies, supporting climate-resilient buildings through energy efficiency and other sustainable design measures. BESS is now used more broadly, with 35 Victorian councils applying it to assess sustainable design at the planning permit stage.

The Townhouse and Low-rise Code has directly undercut councils' role in advancing ESD leadership (via CASBE and local policies). While the Mid-Rise Code may include basic sustainability measures (stormwater, noise, energy), it applies one standard across the state, overlooking the capacity for stronger ESD outcomes in well-located areas.

This situation has occurred despite State Government promises to improve built environment systems sustainability and climate resilience in:

- Plan for Victoria Actions 12 (Protect and enhance our canopy trees), 18 (Improve the environmental sustainability of development)
- Victorian Government Climate Change Legislation, such as Climate Change and Energy Legislation Amendment (Renewable Energy and Storage Targets) Bill 2023 which introduced, for the first time, requirements for consideration of climate change when making certain decisions under the *Planning & Environment Act*
- Ministerial Direction 22 and associated Climate Change Consideration Guidelines which direct and guide how planning authorities should assess greenhouse gas emissions and climate risks
- Victorian Government's Built Environment Climate Change Adaptation Action Plan (2022–2026) which seeks to improve the performance of homes for heating and cooling and providing shade on streets, as well as opportunities for upgrades of existing building stock and improve the skills and capacity of practitioners, industry and community to adapt local places to climate change

This situation has also occurred despite the express requirement on councils, through the 'overarching governance principles' imposed by the *Local Government Act 2020*, to promote "the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks" (Section 9).

The implementation of a deemed-to-comply model reduces design assessment to a checklist, where individual elements are considered in isolation rather than as part of an integrated assessment. It marks a departure from best practice urban design approaches that recognise the interplay between built form, amenity, community outcomes, and environmental resilience.

Alongside the purchase price of a home, housing affordability is concerned with energy, transport and other living costs, and the minimisation of health impacts arising from poor daylight and ventilation. The need to retrofit and upgrade much of Australia's existing built environment to meet current and future climate challenges can no longer be ignored. Decisions made during and after construction can significantly affect a building's energy efficiency and affordability, long after the purchase price has been paid.

In the case of local ESD policy, buildings of 4 to 6 storeys have greater potential to alter local microclimates, increase infrastructure demand, and affect neighbourhood liveability. At this scale, the absence of ESD requirements risks undermining the integrity of place-making, replacing thoughtful design with a one-size-fits-all model.

The need for affordable housing cannot be considered in isolation from the climate crisis. These two challenges are deeply interconnected. Delivering housing that is both accessible and environmentally responsible is not only possible, it is essential.

Planning policy must support solutions that respond to both pressures simultaneously, rather than trading one off against the other.

The Select Committee considered many these matters in detail, as summarised by their Finding 16 and Recommendation 11:

Fig. 2: excerpt of Select Committee final report, pages 31 and 32

FINDING 16: New environmentally sustainable development standards now consistently apply to residential developments under clause 55 of the Victoria Planning Provisions for all parts of the state, where they did not apply before. However, the effect of clause 55 of the Victoria Planning Provisions and the exemptions from clause 65 and the ability to consider local planning policies has had the effect of lowering some environmentally sustainable development standards in 28 local government areas. Whether the lifting of environmentally sustainable development standards across the state, and the lowering of some environmentally sustainable development standards in 28 local government areas, creates a net benefit overall, has not been proven.

RECOMMENDATION 11: That the Victorian Government promptly review and improve the environmentally sustainable development standards in clause 55 of the Victoria Planning Provisions with a view to ensuring the statewide standards meet the higher standards found in 28 local government areas.

We implore the Victorian Government to reconsider its current direction of reducing ESD outcomes in residential development. Victoria's planning system should be evolving toward deeper integration of environmental, social and economic objectives. The opportunity to build more liveable and resilient communities should not be lost.

3.3 Lifting Design Quality

We support the proposal to require, as part of applications, an urban context report and a design response report in addition to a self-assessment of compliance against the standards.

However, in the absence of any standard or provision within the Code that would allow the responsible authority to require, by condition, that unsatisfactory elements of the 'design response' be improved, the statutory importance of the 'design response' appears to be very limited.

For example, the application requirement to submit a design response that "explains how the proposed design specifies materials and finishes for the external walls" and "derives from and responds to the urban context report" may have some value in encouraging applicants to think carefully about how new mid-rise residential development sits within a local context. However, if all standards have been met, there is no link between the application requirements (requiring the submission of an urban context report and a design response) and the decision guidelines. There can be no design quality assessment in any meaningful sense.

We submit that the design quality assessment will need to be given more substantial statutory weight than is implied in the draft Code. As a stopgap measure, the design quality assessment could be its own objective and corresponding standard.

Many councils have already considered what design quality means in the context of their local areas by undertaking analysis on what makes good design (and in some cases, what is not considered good design) in their local areas[3]. This work has

[3] See for example: Merri-Bek City Council's "Good Design Advice", Maribyrnong City Council's "Medium Density Design Guidelines",or City of Glen Eira's "Quality Design Guidelines"

included extensive character analysis with input from leading architects who can reflect an evolving understanding of good design practice in council guidance. Councils have used design quality policy and guidance work to lift the quality of applications and place the onus on applicants and their design consultants to lift the standard of applications seeking council approval.

That councils have had to do this work in the first instance has shown there has, for a long time, been a policy and education gap in the property development and building design industry to lift the standard of their applications to a broadly acceptable level.

There is an opportunity for the DTP to learn from councils that have developed guidance and policy to lift the quality of design and provide social license for 'density done well' in changing neighbourhoods.

3.4 Measuring performance

The Select Committee inquiring into VC267 found that "The performance of clause 55 of the Victoria Planning Provisions, including its performance in relation to the administrative process, must be measured". It is unclear whether the government is in fact measuring the performance of clause 55, and whether outcomes that it is producing are satisfactory.

The principle applies equally to clause 57. The government's stated objective that the mid-rise code will "**simplify** the delivery of **well-designed** homes in **well-serviced areas**" contains three measurable indicators. Only by collecting and analysing data about timeframes, density changes and built form outcomes will the government be able to assess the success of the new code and inform future improvements.

Recommendations
1. Ensure comprehensive decision-making criteria and guidance
The Mid-Rise Code must not operate in isolation from broader planning objectives. Therefore, the exemptions in clause 57 should not mirror those in clause 55. The responsible authority should continue to have regard to the Planning Policy Framework, the purposes of Zones, the decision guidelines of Clause 65 and (most of) the requirements of Section 60 of the Act.
2 Embed ESD local policy into the standards
Lift all ESD-related standards by drawing on the harmonised CASBE local policies found in 28 planning schemes.
3. Embed design quality
Give greater statutory weight to the design quality application requirements and assessment, building on the extensive design quality work already undertaken by councils to ensure a "density done well" approach.
4. Measure performance and outcomes
Commit to rigorous monitoring and reporting to ensure that housing supply, affordability, and design quality outcomes are achieved, rather than assumed.

4 Temporary measures to improve the Mid-Rise and Low-Rise Codes

The MAV is concerned that DTP is replicating the problems identified in the findings and recommendations made by Select Committee inquiring into Victoria Planning Provisions Amendment VC267.[4] In the context of the mid-rise reforms, concerns about exemptions, loss of local policy weight, and constrained decision-making, remain relevant.

Fig. 1: excerpt of Select Committee final report, page 29

FINDING 14: The clause 65 decision guidelines of the Victoria Planning Provisions assist in guiding sound planning decisions. The most important are the guidelines that require consideration of risks to human life and health, and to the environment. These include:

- any significant effects the environment, including the contamination of land, may have on the use or development
- the effect on the environment, human health and amenity of the area
- factors likely to cause or contribute to land degradation, salinity or reduce water quality
- the extent and character of native vegetation and the likelihood of its destruction
- the degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

RECOMMENDATION 7: The decision guidelines of clause 65 of the Victoria Planning Provisions should apply to all decisions made under clause 55. This is most important where risks to human life and health, and to the environment, should be identified and managed.

Some of the unintended consequences foreshadowed by the MAV and the Select Committee are being discovered by councils who retain the role of assessing and approving the overwhelming vast majority of applications in the state (approximately 95% of all applications). With the Department only undertaking a high-level and piecemeal monitoring of Clause 55, these unintended consequences are not being recorded in any detail. The MAV understands that some of these quickly materialising unintended consequences include:

- Forced-approval without conditions of deemed-to-comply development on land that the EPA has identified as high risk with regard to land contamination or landfill gas. This is occurring because Clause 55 directs that the decision guidelines at Clause 65 and the requirements of Section 60(1)(e) must not be called on by the decision-maker
- Under-development of well-located sites proximate to public transport in the Housing Choice and Transport Zone and other Zones. Clause 55 requires development that meets all standards as 'deemed-to-comply' and therefore cannot be negotiated, and the purposes of the Zone ("to provide housing at increased densities") must be ignored by the responsible authority for the decision

[4] See final report of the Select Committee on Victoria Planning Provisions Amendments VC257, VC267 and VC274

- A strong preference from applicants to convert large sites capable of three or more apartments into two townhouses. We note that while the design of Clause 55 encourages this outcome, the development feasibility of townhouse typologies over apartment typologies under current market conditions is also a significant driver
- Lower quality environmentally sustainable design outcomes and higher residential cooling costs in 28 local government areas, for example with regard to unreasonable heat gain in habitable rooms due to switching off local policy that previously allowed councils to require the shading of east- and west-facing windows. (See CASBE submissions for a more complete account of ESD risks.)

The problems identified in relation to the low-rise code may be exacerbated under the proposed Mid-Rise Code, given the greater density and cost of development.

To avoid repeating the unintended consequences of the Low-Rise Code in the Mid-Rise Code, the MAV recommends that the DTP builds in stronger mechanisms for local variation, integration of ESD and urban design policy, and retention of the decision guidelines of clause 65 of the VPP along with a reasonable application of Section 60(1A) of the Act. Without these, the reforms risk repeating the Select Committee's criticisms: simplification at the cost of planning system legitimacy, environmental protection, local trust, and policy effectiveness.

It is important to recall that the Select Committee opposed the removal of local discretion and policy nuance on a range of matters[5]. The Select Committee was specific in its findings that removing local decision-making tools weakens councils' capacity to uphold policy outcomes in areas such as Environmentally Sustainable Design (ESD) and pushing for stronger urban design policy seeking a "density done well" outcome. The MAV and many council submissions reinforced this, warning that exempting proposals from important local planning policy considerations undermines councils' ability to balance required growth with ongoing liveability and the avoidance of unacceptable risks to human health and the environment. The proposed Mid-Rise Code appears to continue this path by offering limited avenues for councils to improve design beyond a narrow schedule of standards and overlays, where they are present.

The recommendations in this submission align with the MAV's advocacy for a balanced, place-based planning system: one that simplifies processes for mid-rise housing delivery but doesn't repeat VC267's problems of weakening local policy tools, exempting important decision-making considerations and undermining community confidence.

This approach should also be applied to Clause 55 (the Townhouse and Low-Rise Code) to give effect to the Select Committee's recommendations, and to avoid the situation where the Clause 57 is only replicating the problems of Clause 55.

We understand that the Department proposes to review each of Clauses 54, 55 and 57 in 2026, rather than its original plan to conduct a six-month review of Clause 55 (which would have ended in October 2025). We strongly submit that, until that review is finally conducted, the default state of Clauses 55 and 57 should be one where key decision-making criteria (that the Select Committee has identified as being very important to the overcome risks to human life and the environment) are not switched off: the precautionary principle must apply.

[5] Findings 7, 13, 14, 16 in the Select Committee's final report discuss these matters

The regulatory design of clause 55, and the over-use of exemptions, remains the issue raised with the MAV by council planning teams more than any other. The regulatory design is flawed and needs to be addressed now – alongside the introduction of the new clause 57 – not be reconsidered some time in 2026.

Recommendations
5. Temporary measure: Switch on important decision-making considerations
A revised approach should ensure that local policy settings retain genuine weight in decision-making, that councils can tailor standards through schedules in a meaningful way, and that decision guidelines remain applicable to support holistic planning assessments. This alignment would deliver the intended benefits of streamlining while preserving the integrity, trust, and policy balance necessary for effective mid-rise housing delivery. *A preferred approach to regulatory design of the new Clause 57 that would give effect to this recommendation is found at attachment 1.*
6. Temporary measure: Replicate this approach in Clause 55
The previous recommendation should be replicated in respect of clause 55, the Townhouse and Low-Rise Code. This will give effect to the Select Committee's findings and recommendations, correct the most significant flaws in clause 55, and protect the amendment that updates clause 57 from disallowance (or referral to another Select Committee). *A preferred approach to regulatory design of Clause 55 that would give effect to this recommendation is found at attachment 1.*

5 Attachment 1

The MAV's preferred approach to the regulatory design of Clause 55 and draft Clause 57 until such time as a meaningful review can be conducted

Our recommendations 5 ("Temporary measure: Switch on important decision-making") and 6 ("Temporary measure: Replicate this approach in Clause 55") could be given effect by the below changes to the 'Exemptions' ordinance found in both Clause 55 and draft Clause 57 – for they are identical.

These changes would also give effect to the Findings and Recommendations of the Select Committee inquiring into amendment VC267. These changes would therefore address the concerns of the legislature, especially in relation to the most significant risks identified by the Select Committee: those that affect human life and health, and the environment.

The MAV strongly submits that both Clauses 55 and 57 should be amended to give effect to the below suggested changes **when the new Clause 57 is introduced** to the Victoria Planning Provisions in late 2025, and not some time in 2026 after the review of Clauses 54, 55 and 57 is complete. (This review was announced at the council planners workshop held on 9 September 2025, replacing the earlier review of Clause 55 which councils were expecting to conclude in October 2025.)

The precautionary principle should apply until such time as a proper review can take place.

MAV suggested changes to the 'Exemptions' in Clause 55 and draft Clause 57	Note
Exemptions Despite any other provision of this planning scheme, in determining applications to which this clause applies, the responsible authority is exempt from and is not required to consider: • The Municipal Planning Strategy and Planning Policy Framework with the exception of any policy under clauses 15.01-1L, 15.01-2L or 22.06 relating to environmentally sustainable development, unless an applicable decision guideline specifies otherwise. • The purpose or decision guidelines of the relevant zone, unless an applicable decision guideline specifies otherwise or the application would constitute an under-development in relation to the purpose of the relevant zone. • ~~The decision guidelines in Clause 65, unless an applicable decision guideline specifies otherwise.~~ If there is any inconsistency between the requirements of this clause and another provision of this planning scheme, this clause prevails. An application to which this clause applies is exempt from the requirements of: • Section 60(1)(b)~~, (e)~~, (f), (1A)(b) to (eb) and (j) and (1B) of the Act; and • Section 84B(2)(b) to (da) and (i) to (jb) of the Act.	1 2 3 4 5

Notes

1. This suggested change addresses Select Committee Finding 16 and Recommendation 11, which sought to undo the lowering of ESD standards in 28 local government areas.

   The new text, an 'exclusion from the exemption', would capture local ESD policies in 31 planning schemes (27 that have harmonised ESD policies under the guidance of CASBE and 4 others). In each case, the strategic justification has been established for these ESD policies, and Planning Panels Victoria has found the policies to be sound, reasonable and justified.

   The new text would allow for the decision-maker to draw on local ESD policy where that policy provides superior outcomes to codified standards. For example, it would allow for the low-cost shading of east- and west-facing windows to improve energy efficiency and lower cooling costs, improving the affordability of new homes.

2. This suggested change allows the decision-maker to consider the purpose of zones that encourage higher density housing, for example the purpose of the Housing Choice and Transport Zone to "provide housing at increased densities". In doing so, it will allow the decision-maker to discourage (but not to refuse) the under-development of well-located sites proximate to public transport.

3. This suggested change gives effect to Select Committee Finding 14 and Recommendation 7 ("The decision guidelines of clause 65 of the Victoria Planning Provisions should apply to all decisions made under clause 55. This is most important where risks to human life and health, and to the environment, should be identified and managed").

   The suggested change (in conjunction with #4) would allow the decision-maker to apply reasonable conditions on planning permits to address risks associated with contaminated land (for example, to require the remediation of land prior to constructing new homes).

   The suggested change would not undermine the purpose of the deemed-to-comply framework because the specificity of the decision guidelines associated with each objective takes precedence over the generality of the decision guidelines of clause 65.

4. This suggested change reinstates the following matters that a responsible authority either must or may consider under Section 60 of the Act:

Requirement proposed to be reinstated	MAV commentary
S60(1) Before deciding on an application, the responsible authority must consider— (e) 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	These reinstatements give effect to the Select Committee's Finding 16 and Recommendation 11. They allow the decision-maker to consider and address significant risks to human life and health, and the environment. They explicitly allow EPA guidelines to be considered, e.g. the *Separation Distance Guideline* and *Landfill Buffer Guideline*, and so enable the application of reasonable permit conditions where land is contaminated.
S60(1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider— (f) any relevant environment reference standard within the meaning of the Environment Protection Act 2017; and (fa) any Order made by the Governor in Council under section 156 of the Environment Protection Act 2017	
S60(1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider— (g) any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council	This reinstatement allows the decision-maker to consider guidelines published by the Department, including those that address the operation of clauses 55 and 57.
S60(1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider— (h) any amendment to the planning scheme which has been adopted by a planning authority but not, as at the date on which the application is considered, approved by the Minister or a planning authority	This reinstatement allows the decision-maker to consider evidence of flood, fire and erosion risks known to government but not yet found in gazetted land management overlays, and to mitigate those risks via conditions, e.g. by raising ground floor levels to withstand floods.
S60(1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider— (i) any agreement made pursuant to section 173 affecting the land the subject of the application	This reinstatement overcomes the inefficiency of forcing the approval of planning permission for development that is prevented by a binding legal agreement.

5. Section 60 sets out the matters the *responsible authority* must consider, while Section 84B sets out the matters the *tribunal* must consider. This suggested change is necessary to ensure that the extent of exemptions under Section 60 and Section 84B is consistent.

MAV would be pleased to provide clarification on any information in this submission.
For further information, please contact inquiries@mav.asn.au

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