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24 April 2025

Committee Manager
Select Committee on Victoria Planning Provisions amendments VC257, VC267 and VC274
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

by email to vppamendments@parliament.vic.gov.au

Submission by the Municipal Association of Victoria

Dear Committee Chair, Members and Secretariat,

Councils are the primary employers of planners in Victoria. As the legislated peak body for local government, the Municipal Association of Victoria (MAV) has closely followed the development of amendments VC257, VC267 and VC274 and their effects on the planning system, councils and communities.

Before we respond to your questions and terms of reference, we wish to place our responses in context: government policies should be assessed by their effects, not only by their stated objectives or the goodwill that created them. You have asked us to critique the planning provisions introduced by the three amendments, and we have done so, but our criticism of the provisions and their likely effects should not be construed as opposition to the amendments' stated objectives.

The MAV **strongly supports** the stated objectives of the three amendments:

- "to support housing growth in and around activity centres and other well-serviced locations" (VC257);
- "to boost housing construction to meet the housing needs of Victorians" (VC267); and
- "to support housing and economic growth in priority precincts across Victoria" (VC274).

Because we support these stated objectives, and because local government planners will be the primary administrators of the provisions, we want to be confident that the provisions will succeed.

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We will submit that it is too early to know if the provisions introduced by VC257 and VC274 will be adequate to meet the amendments' stated objectives, though we will discuss the risks of not drafting local schedules to the Built Form Overlay and Precinct Zone carefully.

We will also submit that the provisions introduced by VC267 have already created difficulties for the effective administration of the planning system, may reduce the quality of built form and environmental outcomes, and are unlikely to deliver the efficiency gains they promised.

Our submission is in five parts:

Part 1 – Context

We place the three amendments in the context of other recent significant changes to the Victoria Planning Provisions. These changes have caused significant regulatory impact. We believe it is important that the committee understands this recent history so that VC257, VC267 and VC274 can be understood in context.

Parts 2 to 4 – Critiques of the amendments

In respect of each amendment, our critiques respond to your terms of reference and questions.

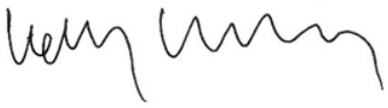
Part 5 – A better way

We make suggestions about a better way to go about planning system reform: one that reduces the instance of changes to the Victoria Planning Provisions that are laudable in aim but administratively inefficient in practice.

We make this submission in the context of another recently published MAV submission on behalf of local government: *Reforming Victoria's Planning System*. The housing and environmental challenges facing Victoria are formidable and demand transformative changes in land use and development. It is imperative that these changes achieve a social licence. A planning system that leverages social licence will deliver higher quality housing growth and build great places to live.

We are happy to take your further questions during the hearing or in writing.

Yours sincerely,



Kelly Grigsby
Chief Executive Officer

Submission attached.

Submission by the Municipal Association of Victoria

Select Committee Inquiry into Victoria Planning Provisions amendments VC257, VC267 and VC274

Contents

Part 1 - Context

The Housing Statement

1. Victoria's Housing Statement was published in September 2023. It included 33 initiatives, including two that directly informed the three amendments under consideration by the Select Committee:

> **Increase housing choice in activity centres**
> We'll introduce clear planning controls to deliver an additional 60,000 homes around an initial 10 activity centres across Melbourne: Broadmeadows, Camberwell Junction, Chadstone, Epping, Frankston, Moorabbin, Niddrie (Keilor Road), North Essendon, Preston (High Street) and Ringwood. Activity centre plans will guide investment in the things a growing suburb needs like community facilities, public spaces and parks. The program will also consider the best way to incentivise more affordable housing.
>
> **Faster permits and planning certainty**
> We'll streamline assessment pathways with a range of new Deemed to Comply residential standards for different types of homes. Council planners will be able to quickly approve permits for houses that meet the residential standards – like how much space homes take up on a block, or how much storage a home has – meaning councils will only assess aspects of a permit that don't comply with those standards.

2. The Housing Statement recognises that housing is one of the biggest challenges facing Victoria, and that we need to rapidly increase housing supply. The MAV agrees. The Housing Statement must, however, be understood for what it is: a list of initiatives already agreed by the government. It is not a white paper or similar document. It sets out at a very high level what the government intends to do, but does not canvas why the initiatives have been chosen over other policy options or how the detail of each initiative will be worked out.

3. Eighteen of the Housing Statement's initiatives make changes to the planning system (by which we mean the framework enabled by the *Planning and Environment Act 1987* and the

subordinate legislation it facilitates, including the Victoria Planning Provisions (VPP) and planning schemes, Regulations, Ministerial directions and the practices of decision-makers and professional planners across local and state government). These initiatives are all welcome in principle, but it is the policy development and implementation process that will determine whether each initiative will deliver the benefits they promise.

Poor planning system collaboration

4. 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. Councils are by far the largest employer of planners in Australia.[1] 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.

5. This distribution of powers and responsibilities 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").[2]

6. The disadvantages can theoretically be overcome through genuine state-local collaboration on planning system reform and meaningful consultation on proposals to make structural changes to the VPP. In practice, the coordination between planning system designers in state government and planning system administrators in local government has steadily deteriorated in the 26 years since the introduction of the new format planning schemes.

7. The Victorian Auditor General has sought to rectify this. Major audits of the planning system were conducted in 2008 and 2017. The reports following these audits both recommended that a state-wide system performance monitoring and feedback framework be established. The 2017 report was very critical of the government for not acting on the 2008 recommendation.[3] As of 2025 there is still no such framework.

8. The absence of meaningful and continuous collaboration between planning system designers in state government and planning system administrators in local government has contributed to the proliferation of new controls (including 'VicSmart' and other codified pathways), with too many of these controls increasing, not reducing, administrative complexity. This pattern continued with new controls introduced on the day the Housing Statement was released and in the period since, mostly without prior notice or consultation with local planners.

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

9. Alternative mechanisms to achieve state-local collaboration on regulatory design have also failed. The Victorian State-Local Government Agreement[4] was abandoned after November 2014 despite frequent requests from the MAV, the signatory on behalf of local government, to revive it. 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.

10. While the imposition of administratively inefficient planning controls on local government was already a significant problem prior to the release of the Housing Statement, the problem has grown since. Given the fixed nature of the initiatives in the Housing Statement, consultation on the initiatives (where there has been any) has not resulted in significant improvements to draft proposals, and alternative proposals for more efficient means of reaching the same objectives have been dismissed. The deemed-to-comply Townhouse and Low-Rise Code is a good example of this.

11. The MAV has conscientiously worked to avoid this nadir in state-local government relations. 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.

The MAV quickly extended 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. The opportunity to establish a partnership on the terms proposed by the MAV in September 2023 is now lost: *Plan for Victoria* has been finalised, the locations of the Activity Centres have been chosen, and the review of the Act is well progressed.

[4] Victorian State-Local Government agreement

Recent significant changes to the Victoria Planning Provisions

12. 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. The cumulative effect of these changes should be understood to place amendments VC257, VC267 and VC274 in context.

13. Amendment VC242 was gazetted on 20 September 2023, the day of the Housing Statement.

Description	New particular provision at clause 53.23 to facilitate 'significant residential development' (inclusive of 10% affordable housing*) and at clause 53.22 'significant economic development'. These allow development outside usual height, set back and garden area requirements, and make the Minister the decision-maker. *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 without the Minister's decision-making status being removed.
Regulatory impact on local government	• Councils are still required to conduct an assessment in order to provide accurate technical advice and permit conditions, but do not collect fees. • Some councils have reported that the loss of responsible authority status (under 53.23 and other pathways assisted by the state's new Development Facilitation Program) has cost up to 40% of their statutory planning fee revenue. • Councils are still required to prepare notice where the Department does not hold details of surrounding properties. • Where the outcome is a cash-equivalent gift to Homes Victoria, no affordable homes will be built on site but infrastructure to support denser-than-planned population will fall on rate-payers via councils to deliver. • There is no requirement that Homes Victoria reinvests collected cash locally. • The burden falls on local government planners, not the state, to explain to interested parties and members of the public how assessment pathways and notice, objection and review rights have changed. • There are therefore examples where councils are now doing *more* work in association with applications under 53.23 and 53.22 when they are not the decision-maker or fee collector, than they would have when they were.
Prior local govt consultation	Some limited consultation subject to signed confidentiality deeds.

14. The next day, the government promised 'Good Decisions Made Faster' aided by an expanded 'Development Facilitation Program' (DFP). The DFP facilitates all applications under clause 53.23, to "cut application timeframes for these types of projects from more than 12 months down to four".[5] We are not aware of any planning permits issued under clause 53.23 having commenced construction. We are, however, aware that applicants can spend a year in 'pre-application' discussions with the DFP.

[5] Premier and Planning Minister media release, 21 September 2023

15. Amendment VC243 was gazetted one day later again: on 22 September 2023.

Description	Codify residential development standards (up to 4 storeys) by making compliance with numerical standards deemed-to-comply with related objectives. Expand the Future Homes pilot to apply in all residential zones. Remove permit requirements for single dwellings on lots of 300sqm or more. Introduce VicSmart stream for single dwellings on lots less than 300sqm.
Regulatory impact on local government	• Moving the approval of dwellings to VicSmart is a significant departure from the pathway's original intent. • Very fast assessment timeframes for small but complicated proposals risk procedural error. • Design quality, vegetation, landscaping no longer able to be improved through negotiation. • Making numerical standards deemed-to-comply with objectives removes discretion and opportunity to improve design outcomes. • No transitional provisions. • Significant resources are required to explain to interested parties and members of the public how assessment pathways and notice, objection and review rights have changed.
Prior local govt consultation	Some high-level workshops on draft proposed principles and pathways for a new ResCode standards. Detailed provisions not seen prior to release.

16. Amendments VC257, VC274 and VC267 were gazetted on 25 February 2025, 28 February 2025 and 6 March 2025. They are discussed in parts 2, 3 and 4 of this submission.

17. Amendment VC280 was gazetted on 7 April 2025.

Description	New 'Great Design Fast Track' approval pathway at clause 53.25, for two-to-eight storey apartment and townhouse developments that exhibit 'high quality' design and higher sustainability ratings. Minister the decision-maker. Usual height, set back and garden area requirements can be waived.
Regulatory impact on local government	• Councils will still need to assess proposals in order to provide accurate advice and permit conditions, and assist with notice, but will not collect the fee. • The provision casts serious doubt on local govt environmentally sustainable design (ESD) strategic planning and the state's ESD Roadmap, both of which have already undergone years of expensive program development. • Making the Minister the responsible authority for individual sites (including two storey townhouse proposals) that are not 'state significant' is novel. This suggests a very significant expansion of the Minister's 'responsible authority footprint' across the state. • Allowing a choice of responsible authority invites forum-shopping and reduces transparency and accountability. • Treating higher sustainability ratings as a 'special case' tied to less transparent approval pathways does nothing to lift sustainability standards elsewhere. • 'Special case' secrecy also erodes public trust in decisions, contrary to the imperative that widespread support for higher density high quality development will be vital if Victoria is to achieve rapid infill development. • Once again, significant resources will be required to explain to interested parties and members of the public how assessment pathways and notice, objection and review rights have changed.
Prior local govt consultation	None.

18. The six VPP amendments mentioned in the previous four paragraphs:
    a. Were either not consulted on at all, or not adequately consulted on, prior to gazettal;
    b. Impose significant unmeasured regulatory burden on local government;
    c. Are not accompanied by commitments to publicly report the performance of the planning approval pathways and controls they have introduced, either in terms of uptake by applicants, or outcome, or quality of outcome, or efficiency gain/loss; and
    d. Have been made with the stated objective of efficiency and clarity, but not in accordance with an understood strategy to achieve a planning system that is accountable, transparent, administratively efficient and which achieves social licence.

19. The new planning approval pathways that have moved decisions from councils and made the Minister the responsible authority while also making otherwise mandatory controls discretionary (VC242 and VC280) were introduced after the IBAC Operation Sandon Special Report was published in July 2023.[6] The report warns against decision-making practices that preclude public scrutiny.

20. These major changes to the VPP come before the government's project to 'review and rewrite the *Planning and Environment Act 1987*', another initiative identified in the Housing Statement. While the initiative suggests a comprehensive review and a new principal Act, the Department disclosed to local government planners between 24 and 27 February 2025 that only some initial amendments to the 1987 Act would be pursued during this term of Parliament.

Broader planning system reform

21. Ideally, major planning system reform would be holistic. It would consider the Act, then the structure of the VPP, then which approval pathways should be codified within the VPP. Because of the urgency of the reforms listed in the Housing Statement, this order has effectively been reversed. While we understand the imperative to make structural improvements to the VPP quickly, this order does make the overarching strategic direction of the planning system reform project unclear.

22. Emerging 'reform options' for the project to review and rewrite the Act disclosed by the Department between 24 and 27 February 2025 will likely result in the further erosion of:
    a. Local government revenue (due to a 'fee sharing' proposal with referral authorities, which would involve councils subsidising state government referral authorities); and
    b. Social licence (due to the limitation or removal of local variation to zones and overlays and, along with that limitation or removal, the loss of the most important residual mechanism to generate community trust and ownership in strategic planning).[7]

[6] The report was removed from the IBAC website in March 2025 and had not been reinstated at the time of writing.
[7] See *Reforming Victoria's Planning System: local government sector submission* for further details of the 'reform options'.

23. If those emerging 'reform options' are pursued and if no mechanism is created to improve the coordination of state and local stewardship of the planning system in future, we submit that it will not be possible for the Victorian planning system to generate the social licence necessary to achieve the transformative change required to meet Victoria's housing and environmental challenges.

24. The MAV supports improvements to the planning system that facilitate efficient, effective and applications and decisions. As the primary users of the planning system, local government planners have a lot of value to add to planning system design and the development of VCC amendments. It is disappointing that in the rush to design new planning provisions to implement the Housing Statement as quickly as possible, this value has been overlooked.

25. We submit that the lack of shared understanding between planning system designers in state government and planning system administrators in local government is the primary cause of new planning provisions being insufficiently concise, effective and efficient.

Part 2 – Critique of VC257

26. Amendment VC257 introduces the Housing Choice and Transport Zone (HCTZ) and Built Form Overlay (BFO) to the suite of zones and overlays available in the Victoria Planning Provisions. Their stated purpose is "to support housing growth in and around activity centres and other well-serviced locations".

27. We support the stated purpose.

28. The amendment does not apply the new zone and overlay to land. In relation to the first 10 of 60 Activity Centres identified in *Plan for Victoria*, the new zone and overlay are applied to land by amendment GC252. That amendment is not the subject of the committee's inquiry. We do, however, suggest that you consider the submissions made by the 12 councils affected by amendment GC252.

Does the amendment appropriately balance the objectives of planning in Victoria?

29. In relation to the HCTZ, yes.

30. In relation to the BFO, we do not yet know. The reason for this is that the structure whereby the parent control allows a 'deemed to comply' framework, but requires the local schedules to create most of the standards that must be complied with, is entirely novel. Questions of whether the BFO controls are appropriate cannot be answered in the context of VC257 alone:

the detail in the local schedules will reveal whether the objectives of planning in Victoria are appropriately balanced. Detail first emerged on 11 April 2025 with amendment GC252, which created the local schedules; affected councils are still assessing the detail. The local schedules are very long, because they must each create a comprehensive development framework.

31. In relation to the amendment generally, we note that the explanatory report for Amendment VC257 states that the amendment implements the Victorian planning objective "to facilitate the provision of affordable housing in Victoria". Under S3AA of the Act, affordable housing has a particular definition: "housing, including social housing, that is appropriate for the housing needs of" very low, low and moderate income households, with income bands determined by the Minister. Amendment VC257 does not include provisions that require affordable housing contributions. Instead, the HCTZ and BFO include among their purposes to "encourage" affordable housing.[8] We therefore assume that the claim in the explanatory report that the amendment "will facilitate the provision of affordable housing" relies on modelling that shows that the increase in supply generally will produce some affordable housing. We would welcome the publication of that modelling.

Does the amendment give proper effect to the objectives of the planning framework established by the Act?

32. In relation to the HCTZ, yes.

33. We consider that certain planning framework objectives are significantly challenged by the amendment in relation to the BFO:

Planning framework objective (per S4(2) of the Act)	Commentary
(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	The 'deemed-to-comply' standards remove the ability to consider state and local policy and seriously entertained planning scheme amendments when assessing built form under the BFO. While non-consideration of other policy may be appropriate for simple and uncontroversial matters, it is unprecedented in the case of higher density applications.
(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 planning framework objective commenced in the Act on 26 March 2025, after VC257 was gazetted. We do not consider that amendment VC257 gives adequate regard to environmentally sustainable design and climate resilience.

[8] This is consistent with the government's position that the Act lacks a head of power to facilitate mandatory contributions.

(h) to establish a clear procedure for amending planning schemes, with appropriate public participation in decision making	Neither VC257 nor GC252 allowed for public participation. See below for further discussion re consultation.
(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 BFO exempts applications from the standard notice and review provisions of the Act, while allowing local schedules to remove the exemption. (None of the local schedules applied by GC252 do this.) The blanket exemption from giving notice has not been justified.[9]

Is the amendment likely to create any significant unintended outcomes?

34. In relation to the HCTZ, there may be a risk that the zone will facilitate the under-development of sites despite the zone's stated purposes, because there is no discouragement of single dwellings on consolidated lots. This risk exists in most zones that seek to facilitate housing intensification.

35. In relation to the BFO, there may be unintended outcomes where standards in local schedules have not adequately anticipated local site constraints and environmental risks. The extent of that risk will not be known until local schedules that apply the overlay can be assessed in detail.

36. We are very concerned about the use of 'deemed-to-comply' standards on large sites anticipating large buildings. 'Deemed-to-comply' frameworks may be suitable where the decisions to be made are predictable, with little risk of unintended outcomes. But there is no precedent in Victoria for enabling 'deemed-to-comply' frameworks for higher density development at the scale anticipated by the BFO.

37. Nor is there precedent for pushing the underlying structure of the 'deemed-to-comply' framework out of the head control and into local schedules, as the BFO has done.

38. Nor is there precedent for merging 'deemed-to-comply' frameworks with 'public benefit uplift' frameworks and variable floor area ratio limits, as the BFO does.

39. There is therefore very significant pressure on the drafters of the local schedules within the Department. Each and every schedule will need to specify which standards are 'deemed-to-comply' within a 'development framework' that sets out all the built form requirements for all land use and development applications within their reach, while also potentially enabling variable floor area ratios and density bonuses. These local schedules will need to anticipate

[9] We note that the Department gave evidence to the committee on 17 April 2025 to the effect that other precincts exempt third party rights, citing Macaulay as an example. Neither the current nor proposed controls for Macaulay exempt third party rights for building and works.

and remove the possibility of all manifestly undesirable built form outcomes. They will need to be interpreted efficiently by statutory planners and applicants, without giving rise to interpretative dispute. Given the absence of public and stakeholder scrutiny of the local schedules, and the speed with which they were drafted, this exercise in regulatory expression will require unparalleled precision.

40. The risks of 'deemed-to-comply' frameworks applying to larger sites and buildings mostly relate to design quality. This is because the *purpose* of 'deemed-to-comply' frameworks is to anticipate and codify the sorts of applications that are to be expected, thus making the assessment pathway easier to predict and faster to pursue.

41. The *effect* of 'deemed-to-comply' frameworks is to remove the ability of the regulator (government planners and urban designers) to negotiate improvements as would normally occur through a performance-based framework. As such, the 'deemed-to-comply' provisions produce whatever quality of design happens to have been met once compliance with numerical standards has been achieved.

42. Taking the professional judgment of planners out of the decision-making process, and trusting that the market will produce satisfactorily designed proposals under blunt numerical standards within a 'deemed-to-comply' framework, is a very significant decision. It is a decision that suggests a particular philosophy about the role of planning and an absence of trust in place-based planners.

43. It is not the sort of decision that should be taken in the absence of a clearly articulated strategy for planning reform.

Lessons from the central city

44. A recent history of the built form of the central city and the role of planning in lifting design quality may be informative.

45. It is well documented that the period up to 2014 saw the approval by former Planning Ministers of buildings in the CBD and Southbank which consistently waived side setback and tower-separation controls, leading to overly dense and poorly designed buildings without public benefit returns. This created equitable development problems because many applicants expected the same treatment, leading to an over-supply of poorly designed buildings as well as many permits not acted on (inflating the land value considerably) while also detracting from the quality of the public realm.[10]

46. Government responses were three-fold:

[10] Hodyl+Co, April 2016: *Central City Built Form Review Synthesis Report*

a. In March 2013, the Melbourne City Council made it policy to publish all Ministerial applications (those with gross floor area exceeding 25,000sqm) and consider the Council's advisory position on those applications in open meetings, on notice. While this did not change the planning provisions themselves, it guaranteed that all applications would enjoy a level of public scrutiny that was previously absent.

b. In 2015, the Planning Minister commissioned the Central City Built Form Review. The review led to new planning controls, developed in partnership with the City of Melbourne and thoroughly tested in a full planning scheme amendment and independent panel process,[11] that ensured controls regulating setbacks and tower separation were appropriate. This was done without capping yield but by creating a public benefit uplift program (a precursor to the BFO and PRZ model). The controls remain a performance-based framework, allowing modifiable floorplate arrangements.

c. The City of Melbourne followed the Central City Built Form Review with the development of further guidance, through consolidating three overlays into one[12] and publishing a new Design Guide[13] to lift the quality of building design, especially the lower floors of podiums and the interaction of buildings with the public realm, greatly increasing the extent of active frontages and walkability of city blocks. These controls are also largely a performance-based framework.

47. The central city is not the same as the 60 Activity Centres. We are not arguing that the controls ought to be harmonised. Instead, we submit that:

    a. Victorians are rightly concerned about the design quality of higher density places and the public realm.

    b. The Central City Built Form Review and subsequent planning scheme amendments succeeded in the period 2014-2021 due to a consensus between state and local governments about the problem, the causes of the problem, and the choice of solution.

    c. As seen in the central city, despite eventual success, retrofitting planning controls to remedy serious failures in the design quality of buildings and the public realm is a contested, expensive and difficult process.

    d. Retrofitting planning controls to remedy problems caused by 'deemed-to-comply' controls that have already established quantifiable development rights in multiple Activity Centres may require even greater complexity and difficulty.

    e. Transparency of the application and decision-making process is just as important as the choice of planning control when it comes to the quality of built form outcomes.

48. Urban design outcomes enabled by the planning process are the product of a balance of:

[11] Planning Panels Victoria, October 2026, *Panel Report: Melbourne Planning Scheme Amendment C270 – Central City Built Form Review*
[12] See Amendment C308melb explanatory report
[13] City of Melbourne, April 2021, *Central Melbourne Design Guide*

a. Private considerations, being: applicant preferences, architectural culture, market trends and building finance; and
b. Public considerations, being: the type of planning provisions chosen, the role and strength of the planner, negotiation, peer- and government-review, and the transparency of the application and decision-making process.

49. We are not convinced that the government has fully considered the consequences of weakening the public considerations and relying on the private considerations. Certainly, many applicants will propose high quality designs. But many will not, and in the absence of a robust planning framework those proposals will nevertheless be 'deemed-to-comply'.

Was consultation on the amendment adequate?

50. The amendment is part of the government's Activity Centres program, initially undertaken by the Victorian Planning Authority (VPA). The locations of Activity Centres were chosen prior to the commencement of consultation. External consultation consisted of:
    a. 'Phase 1' public consultation (March to April 2024);
    b. 'Phase 2' public consultation (August to September 2024) including on draft plans for the 10 Activity Centres;
    c. Some further limited consultation with councils on proposed planning controls; and
    d. The referral of matters to the Activity Centres Standing Advisory Committee.

51. Phase 2 did not include disclosure of proposed planning scheme amendment ordinance, or the technical background reports to inform and justify the plans (including in relation to community infrastructure, traffic and transport impact, open space, drainage, contamination and buffer assessments). Nor were the costs of infrastructure estimated, or mechanisms to secure those costs proposed.

52. Phase 2 closed on 29 September 2024, 12 days after all 79 councils went into the 'election period'. Under Section 69 of the *Local Government Act 2020*, councils are prohibited from making certain types of decisions during the election period, especially where they have the effect of influencing voting at the election. Councils were therefore required to either make submissions in a way that did not contravene the decision-making prohibitions, or make partial submissions, or not make submissions at all.

53. During this period, planning officers in affected councils, where they could, still sought to engage and participate in the planning process for the new Activity Centres. The officers sought further detail and information on the operation of the Activity Centres Standing Advisory Committee, as well as opportunities to review the draft provisions in the referrals. This was denied.

54. The council officers also requested a deeper partnership to support the Department's and VPA's Activity Centre work. The councils held knowledge and expertise in the planning and delivery of infrastructure and services, and relationships with community and local businesses which they wanted to share. Council officers also sought to influence the economic and social functions of the proposed Activity Centres, not only the role of the Activity Centres in delivering more housing, to ensure that the purpose of the centres for local communities and within the metropolitan region could be better understood. Their offer to partner and assist was not taken up by the government.

55. The MAV was not restricted by the 'election period' provisions. Our submission[14] made four overarching recommendations (to undertake co-design with councils to ensure that Activity Centre planning focuses on place-making and liveability as well as supply; to share the basis on which control design decisions were made; to partner with councils to reform infrastructure contributions and value capture; and to be honest with communities about the desired changes in neighbourhoods to generate social licence). The recommendations were not taken up by government.

56. The Activity Centres Standing Advisory Committee (ACSAC) considered 11 referred matters and provided 11 reports.[15] The first report considered the draft HCTZ and BFO, the second considered 'common matters across all Activity Centres', and the remaining 9 reports considered draft plans for each of the 10 Activity Centres (Niddrie and North Essendon being considered together).

57. The ACSAC reports, along with other consultation reports and technical reports informing the development frameworks, were first published on 14 April 2025 after both VC257 and GC252 had been gazetted.

58. Had a council been the planning authority and pursued this approach to public engagement, disclosure, strategic preparation and built form testing, the Minister would quite rightly have refused to authorise the amendment for exhibition on the basis of its manifest inadequacy.

59. The terms of reference of the ACSAC required that, in relation to each referred matter, the report be submitted "to the Minister and DTP no later than 10 business days from receipt of the referral". The ACSAC was required to consider only the matters and submissions referred to it by the Department.

60. In each of the 11 reports, the ACSAC:

    a. cited the 10 business day deadlines as a significant limitation on its work;

[14] MAV submission on the Activity Centres Program, September 2024
[15] Activity Centres Standing Advisory Committee website and reports

b. noted that the referred materials had to be accepted at face value because there was not time to test them;
c. noted that there was not time to conduct any hearings; and
d. concluded that their advice should therefore not be taken as a comprehensive merits review.

61. In report #1 responding to the draft parent controls referred ten business days earlier (the draft controls being the BFO and the Walkable Catchment Zone, the precursor to the HCTZ), the ACSAC argued that the referred material was difficult to understand without a template local schedule. The ACSAC requested and received a template local schedule, but the headings and terminology used did not match the head clause. The ACSAC also noted that no submissions were referred to it.

62. As time elapsed, the ACSAC became more frustrated with the quality of the referrals. By report #8, the Committee had complained of significant errors, that "the issues were poorly drafted and unclear", that no new maps or plans were provided, and that "where a change was proposed, there was no advice on how these might result in other consequential changes".

63. The ACSAC did not later return to provide advice on the operation of the parent controls and local schedules of the BFO together, for no referral was made. It follows that the testing, refinement and conclusion of the drafting of the controls all occurred within the Department without the directly relevant and current advice of the experts appointed for the purpose of providing that advice.

64. In some instances, the Activity Centre planning by councils for the same areas were already well advanced before the VPA proposed entirely new controls. In the case of the Frankston Activity Centre, a full planning scheme amendment had been conducted and adopted to implement the council's Frankston Metropolitan Activity Centre Structure Plan. The ACSAC was unable to compare the pre-existing, VPA-proposed and council-adopted controls in the time available to it.

65. While the government may say it has consulted extensively on Activity Centres and VC257, the design of the consultation program produced inefficiency and dissatisfaction from councils, community members and experts. The poor use of the expertise and time of the ACSAC, the lack of consultation on the ordinance proper (in detail and in context), and the quick application of the schedules to the BFO (on 11 April) so soon after the creation of the parent control (on 25 February) mean that any significant problems with the new HCTZ and BFO will be discovered after, and not before, gazettal.

66. There is still no serious proposal as to how the infrastructure required to support growing populations in Activity Centres will be provided.

What specific changes would you seek to the amendment?

67. As the BFO must be read alongside its local schedules to make sense of the control, and the local schedules are not part of amendment VC257, we are unable to provide a meaningful response to this question. We nevertheless refer you to any submissions made by the councils affected by amendment GC252.

Which of the VPP that existed prior to the amendment, or this amendment, or alternative proposals, are appropriate to meet the housing needs of the state and local communities?

68. The HCTZ and BFO have the capacity to contribute to meeting Victorians' housing needs. While we are critical of the process that led to their introduction and are still assessing their effects, the parent controls they introduced may be an adequate basis on which to pursue improvements. In the case of the BFO, this will depend heavily on how the local schedules are drafted, and restraint from the over-application of 'deemed-to-comply' standards.

69. Planning controls alone, however, do not compel landowners to construct homes, and they do not guarantee the timely delivery of civil and social infrastructure and public open space. Much more work is required to ensure that the Activity Centres development program leads to the creation of great local places.

Part 3 – Critique of VC267

70. Amendment VC267 replaced clauses 55 (two or more dwellings on a lot and residential buildings; up to three storeys) and 57 (two or more dwellings on a lot and residential buildings; four or more storeys) of the VPP and made consequential amendments to residential zones and schedules. The first stated purpose of the amendment is "to boost housing construction to meet the housing needs of Victorians".

71. We support the stated purpose.

72. The amendment treats decisions to be made under clauses 55 and 57 differently. Clause 55 decisions rely on a series of standards that, if met, are 'deemed-to-comply' with the objectives. This 'deemed-to-comply' framework also relies on a mechanism to prevent the responsible authority from considering any matters outside clause 55, including standard decision-making requirements. Clause 57 relies on a more traditional performance-based assessment, not a 'deemed-to-comply' framework.

73. The MAV's concerns about clause 57 are minor. Our critique of VC267 will hereafter consider only the clause 55 provisions.

Does the amendment appropriately balance the objectives of planning in Victoria?

74. The amendment purports to implement Victorian planning objectives (a), (b), (c), (f) and (g).

75. Objective (a) is to "provide for the fair, orderly, economic and sustainable use, and development of land". For the reasons set out later in this submission, we do not consider the amendment to facilitate the orderly or sustainable development of land.

76. Objective (b) is to "provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity". For the reasons set out later in this submission, we consider that the amendment will cause unnecessary harm to ecological processes and genetic diversity.

77. Objective (c) is to "secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria". For the reasons set out later in this submission, we consider that the amendment requires that decision-makers disregard evidence held by government about flooding, bushfire and erosion, which may have safety implications.

78. Objective (f) is to "facilitate development in accordance with the objectives set out in" (a), (b) and (c). We consider that development facilitated under the controls introduced by the amendment carries the risks identified in the three previous paragraphs.

79. Objective (g) is to "balance the present and future interests of all Victorians". For the reasons set out later in this submission, we consider that the amendment applies inadequate standards for environmentally sustainable design, which may lead to the construction of homes that are not sufficiently energy efficient.

80. We note that, unlike for amendment VC257 which claimed to implement Victorian planning objective (fa) in relation to affordable housing on the basis that the rapid increasing in housing supply will produce some affordable homes, VC267 makes no claim that it will facilitate affordable housing.

81. The amendment does not appropriately balance the objectives of planning in Victoria.

Does the amendment give proper effect to the objectives of the planning framework established by the Act?

82. We consider that certain planning framework objectives are significantly challenged by the amendment:

Planning framework objective (per S4(2) of the Act)	Commentary
(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	The 'deemed-to-comply' standards formally remove the requirement on decision-makers to consider any state or local policy outside clause 55, and to consider the usual decision-making requirements of clause 65 (and, by extension, Section 60 of the Act). While such exemptions may be appropriate for simple and uncontroversial matters, it is not appropriate for clause 55.
(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 planning framework objective commenced in the Act on 26 March 2025, after VC267 was gazetted. We do not consider that amendment VC267 gives adequate regard to environmentally sustainable design and climate resilience. See next sub-section.
(e) to facilitate development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes	Clause 55 expressly requires that the objectives of planning in Victoria not be considered when making decisions.
(h) to establish a clear procedure for amending planning schemes, with appropriate public participation in decision making	Consultation was not adequate for the reasons set out later in this submission.
(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 new clause 55 causes confusion as to how to provide notice to potential objectors, and then how to provide advice to actual objectors, depending on whether or not the decision will be able to be appealed. See next sub-section.

Is the amendment likely to create any significant unintended outcomes?

83. The significant unintended outcomes created by the amendment include:
    a. The excessive removal of vegetation.
    b. In the case of 27 local government areas, lower standards of environmentally sustainable design than would have otherwise been required.
    c. Confusion or significant inefficiency in relation to applications where a building overlay, or a proposed planning overlay, requires a higher ground floor level in order that the proposed building can withstand flooding risks, but the decision-maker must not take those higher ground floor levels into account.

d. Conflicts with potentially contaminated land.
e. Confusion about the status of notice and objections in the circumstances where appeal rights are speculative.
f. A significant call on the tribunal to adjudicate disputes about whether applications do or do not meet standards.
g. The effective invalidation of a large number of planning scheme amendments where councils are the planning authority and which are being prepared, or are mid-statutory process, or are adopted but not yet gazetted, causing very significant wasted resources and the erosion of council and community trust in the planning system.
h. Reduced design quality of new buildings.

84. The MAV made a submission about most of these matters in 2024.[16] The MAV submission aligned with feedback to the Department from council planners involved in high-level workshops. The submission provided recommendations about how to overcome the risks inherent in the proposed 'deemed-to-comply' framework. To the extent the submission proposed alternative mechanisms to achieve the same policy objectives, or identified obvious risks with the design of the Code that needed to be rectified, the submission was ignored.

85. The Department has not released any modelling about the outcomes it expects to see delivered under the Code.

86. We expand on the eight significant unintended outcomes below.

Unintended outcome 1: vegetation loss

87. In the previous version of clause 55, tree retention and planting was managed as part of the landscaping objectives at 55.03-8.[17] This was a performance-based assessment, not a numerical deemed-to-comply assessment. Decision-makers, being required to draw on other policies or provisions in the planning scheme where relevant, were able to ensure that the objective "to encourage the retention of mature vegetation on the site" could be met, through conditions on permits that required significant yet reasonable tree retention.

88. The old objectives and standards were far from perfect. Provisions guiding landscaping and trees were couched in terms of neighbourhood character, not in terms of urban greening and cooling or biodiversity. They were also frequently contested by applicants, though that is inevitable when considering a matter as highly variable as vegetation and local growing conditions: such matters cannot be resolved through straight lines on a map or short sentences in ordinance. Resolving these conflicts is what planning is for, and if ever there is a

[16] MAV submission on ResCode reform, 20 September 2024
[17] See sub-clause 55.03-8 down the page in this pre-VC268 version of clause 55.03.

matter that requires contextual planning responses based on the conditions found in individual sites and environs, it is vegetation and landscaping.

89. The new Code has no landscaping objective and standard. Instead, a new objective and numerical standard in relation to tree canopy is found at clause 55.02-7. The objective is deemed-to-comply if the standard is met. The standard is a canopy cover of 10% of the site area for sites 1,000sqm or less or 20% of the site area for sites more than 1,000sqm. The standard goes on to explain how canopy cover of existing and proposed trees is to be measured.

90. Dr Stephen Rowley has argued that "the tree canopy to be achieved under the new provisions is likely to be less – and potentially much less – than was typically achieved under the old provisions in most suburban scenarios." He has also argued that the 10% canopy standard does not have an apparent relationship with the *Plan for Victoria* target of 30% tree canopy cover in urban areas, that the design of the new standard are likely to encourage 'moonscaping' because it will be far easier for developers to use new trees to achieve the standard than to rely on existing trees, and that the lack of requirements for landscaping beyond the minimum tree canopy requirement is a significant gap in the Code that should be rectified urgently.[18]

91. We ask the Select Committee to consider the effect the Code may have on areas that currently enjoy very significant tree coverage. In our submission *Reforming Victoria's Planning System*, we rely on a case study from Nillumbik Shire.[19] 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 applies the new 10% or 20% canopy cover depending on lot size; substantially less than the existing almost 40% canopy coverage of many developable lots.

92. The government has not published any modelling demonstrating the canopy cover outcomes expected under the Code and how these relate to existing canopy cover or the target canopy cover under *Plan for Victoria*.

Unintended outcome 2: inadequate environmentally sustainable design

93. The new Code includes a range of improved environmentally sustainable design (ESD) standards. Previously, most ESD standards that apply to residential development were found in either Local Planning Policies or the Building Code. The old clause 55 included standards

[18] Dr Stephen Rowley, 30 March 2025, *What Does 10% Tree Canopy Cover Look Like?*
[19] See page 26, MAV, April 2025, *Reforming Victoria's Planning System: local government sector submission*

that relate to energy efficiency, but they provided limited guidance and did not set any benchmarks for environmental performance.

94. The advantages of locating ESD standards inside codified approval pathways include that they apply wherever the Code applies. The disadvantages of locating ESD standards inside codified approval pathways include that the ESD standards need to suit all sites and contexts and cannot draw on local risks, opportunities and council ambition. This disadvantage can be overcome if the Code allows local variation, but cannot be overcome if the Code relies on a strictly deemed-to-comply framework.

95. Argument about where ESD standards should sit in the planning and building legal frameworks have been unresolved for decades, but the government's position has been significantly clarified by its *Environmentally sustainable development of buildings and subdivisions: A roadmap for Victoria's planning system* (the ESD Roadmap).[20] The ESD Roadmap has two stages: stage 1 (complete) updates the Planning Policy Framework, while stage 2 (which was to be completed by September 2021 but which is significantly delayed) updates the particular provisions, including clause 55 – the new Townhouse and Low-Rise Code. The ESD Roadmap does not anticipate a 'deemed-to-comply' framework for clause 55.

96. Councils have a long history of cooperation to apply ESD regulation to new development in the planning system in lieu of leadership from the Victorian Government. The 2008 and 2017 VAGO audits of the planning system both acknowledge significant ESD policy gaps in the VPP. The 2017 report noted that there is a "lack of specific guidance to address key planning challenges, such as social and affordable housing, climate change and environmentally sustainable development [and that] 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".[21]

97. The first harmonised local planning policies for ESD were introduced by councils into six planning schemes in 2015. Those policies have since been improved and harmonised across 27 councils, largely under the facilitation of the Council Alliance for a Sustainable Built Environment (CASBE), auspiced by the MAV. CASBE has 44 members.[22] 24 of them are currently seeking joint planning scheme amendments to further improve ESD planning provisions: these amendments have not been authorised for exhibition by the Planning Minister, presumably because of the potential for uncoordinated strategic planning between state and local governments.

98. The ESD standards that are in place in the local policies of 27 municipalities are generally higher than those required by the new Code at clause 55. While the new Code comes with the

[20] Environmentally sustainable development of buildings and subdivisions
[21] Victorian Auditor General, March 2017, Managing Victoria's Planning System for Land Use and Development
[22] https://www.casbe.org.au/who-we-are/membership/

benefit of state-wide application, lifting the standard in other councils, it will obviously reduce the ESD outcomes in the case of 27 local government areas.

99. CASBE has conducted an analysis of 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 the new provisions with the old. In the case of the new provisions, the analysis considers clause 55 as well as the National Construction Code wherever clause 55 is silent. Significant differences between the old and new provisions 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

100. The Department has received a copy of the analysis. We note that the Department, under questioning by the Select Committee on Thursday 17 April 2025, gave evidence to the effect that improvements to the Code could be explored but that the National Construction Code will adequately pick up any matters that the Code does not address.

101. We fundamentally disagree with this position. The time to consider how to achieve energy efficiency through passive design is at the point of design, not at the point of construction. This provides administrative efficiency and allows for the most affordable design options to be chosen early. We are frustrated that arguments that ESD design questions can be left to the

building system are reemerging from the same Department that released an ESD roadmap "for Victoria's planning system".

102. We commend to you any submission made by CASBE.

Unintended outcome 3: inefficient consideration of flooding risks

103. Clause 55 requires that the decision-maker *not* consider S60(1A) of the Act. S60(1A) would normally require that:

> (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...

104. Consider the example of a planning scheme amendment that implements the latest evidence held by government that maps overland or riverine flood risks. The usual effect of such amendments is to increase the extent of a relevant flood-related land management overlay, which in turn will require higher ground floor levels for new buildings and requirements to refer permit applications to the responsible water authority.

105. Normally, the decision-maker could draw on that adopted planning scheme amendment to require that a planning permit be approved subject to design improvements to raise the ground floor level, and make consequential design improvements to reduce adverse outcomes (such as poor interaction with the public realm where raised ground floor levels are significantly higher than the natural ground level).

106. The decision-maker is no longer entitled to do this in the case of applications assessed under clause 55.

107. The Department, in evidence provided to the Committee on Thursday 17 April 2025, suggested that overlays in the Building system would be adequate to address the issue. And we have no doubt that local planners will draw applicants' attention to the existence of such overlays, so that they can be anticipated before expensive design decisions are locked in at the planning stage. But this will now be an entirely informal process, and it will do nothing to address the issue of design quality of buildings between the natural and raised ground floor levels.

108. There will be some areas that clause 55 applies where the difference between natural and raised ground floor levels is considerable (over two metres).

109. Consider this issue from the point of view of the applicant. If the applicant has engaged a

suitably professional consultant to navigate planning and building permission, there is every chance that they will be able to anticipate the building requirements before lodging a planning application. But if, for whatever reason, the applicant is not informed about the building requirements, or does not trust the information informally given to them, and insists on lodging an application that is 'deemed-to-comply', government is obliged to approve the application knowing full well that it will fail at the building permit stage. This is not efficient.

110. Given current pressures on private building surveyors, we are surprised at government's comfort in moving risk from the planning system to the building system.

111. Our concerns about flooding risks also apply to hazards managed by other adopted and not-yet-gazetted planning scheme amendments. Such amendments may address coastal and other erosion, or bushfire risk, or proximity to high pressure pipelines – but none may be considered where applications under clause 55 are 'deemed-to-comply'.

Unintended outcome 4: conflicts with potentially contaminated land

112. Unlike in the case of flooding, the Building system does not identify Potentially Contaminated Land. These matters are normally addressed at the planning stage, wherever planners are able to bring them to the attention of applicants.

113. Clause 55 removes the ability to consider Potentially Contaminated Land.

114. While some protection may be found in the Environment Protection Act and legal framework, including the General Environmental Duty on landowners to proactively identify and manage environmental risk, this is not a matter that is referenced in planning controls. The absence of ability to address Potentially Contaminated Land through the planning stage places all burden on the landowner's due diligence.

115. If the Department's view is that the General Environmental Duty is sufficient to manage Potentially Contaminated Land, this brings into question the purpose of *Planning Practice Note 30: Potentially Contaminated Land*.[23] Either the Code should be reviewed, or the Planning Practice Note should be reviewed.

Unintended outcome 5: administrative inefficiency caused by speculative appeal rights

116. Clause 55 creates confusion as to how to provide notice to potential objectors, and then how to provide updated notice to actual objectors depending on whether or not the decision will be able to be appealed. How and when this notice and advice is to be issued is unclear, because

[23] Planning Practice Note 30: Potentially contaminated land

third party appeal rights arise only when it can be established that an application is not fully 'deemed-to-comply'. That status might only be discerned late in the assessment process.

117. Normally, the presence or absence of third party appeal rights is explained in the planning control. A decision to approve the application either is, or is not, subject to third party appeal, and this is known at the point of application. The novelty in the new clause 55 is that third party appeal rights are speculative, well into the assessment process and well after objectors may have invested significant time and effort into critiquing an application. Where applications are found to be 'deemed-to-comply', those objections will be discarded, and it will fall on council planners to explain to members of the public why that is so.

118. Councils, especially Rural and Regional councils, are struggling to attract planners and compete with state government salaries. Reducing the role of planner to fielding complaints from the public, rather than exercising professional judgement to influence actual planning outcomes, is not going to assist.

119. Councils have not received adequate advice from the Department about the form, content and timing of notice and other correspondence with third parties. Each council is making their own decisions about how to handle these matters. This is not efficient.

Unintended outcome 6: burden on the tribunal

120. On the surface, the removal of third party rights for 'deemed-to-comply' applications appears designed to reduce the burden on the tribunal and – by extension – remove the possibility of unreasonable delay for the developer. We understand this objective and note that it is possible to achieve it without a 'deemed-to-comply' framework.

121. We are concerned, however, that the burden on the tribunal may be significant, especially in the early period following the gazettal of VC267. This is because so much hinges on whether or not a standard has been met: this determination dictates whether the application is later subject to appeal and delay, attracting significant additional development and land holding costs.

122. Where there is a dispute between the applicant and the regulator about whether a standard has been met, the tribunal can be called upon to make a determination. In evidence to the Select Committee on Thursday 17 April 2025, the Department indicated that it expected some activity in the tribunal about these matters.

123. The tribunal's workload will likely be commensurate with the accuracy of the legal expression of the standards.

Unintended outcome 7: the invalidation of other strategic planning work

124. The extent to which clause 55 exempts the decision-maker from drawing on certain information and considerations when making a decision has significant implications for strategic planning work underway.

125. Where the councils are the planning authority, and planning scheme amendments are being prepared, or are mid-statutory process, or are adopted but not yet gazetted, the scope and strategic bases of these planning scheme amendments are now in doubt. This is because the extent of exemptions in the new clause 55 is greater than anticipated, so councils have been preparing amendments in anticipation that they will apply to townhouses and low-rise dwellings. In some cases the resources invested in the preparation of these amendments has been considerable.

126. Strategic planning work in this situation includes the 27 joint amendments to improve ESD standards, as discussed earlier, and any housing studies that were intended to inform the application of local schedules to residential zones, and certain overlays.

127. By way of example, Mornington Peninsula Shire Council has prepared planning scheme amendment C219morn. The amendment changes local schedules for existing residential zones 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, which do not limit housing supply, would be 'switched off' through codified approval pathways.

Unintended outcome 8: reduced design quality of new buildings

128. For similar reasons to those provided in relation to VC257, we are concerned about the erosion of design standards generally, where one-size-fits-all 'deemed-to-comply' standards remove the ability of the regulator (planners) to encourage or negotiate beneficial design improvements.

Was consultation on the amendment adequate?

129. There was consultation on the draft Code in 2024. While minor changes were able to be made based on the feedback of local government planners included in workshops, the

foundation of the proposed clause 55 was not up for discussion.

130. The final form of the amendment was not known until it was gazetted on 6 March 2025 and therefore there was no opportunity to critique the detail before it came into effect. The extent of the exemptions found in clause 55 were greater than anticipated, with significant administrative implications for councils.

131. The transitional arrangements for the amendment provided that clauses 55 and 57 would be replaced in all planning schemes on 31 March 2025, but that all applications lodged on or after 6 March 2025 would be subject to those new provisions – provided that the decision falls on or after 31 March 2025. The application type, whereby third party review rights may or may not exist depending on how the assessment plays out, required new correspondence templates and systems support. These were required to be implemented immediately. Inadequate support or advice was provided as to how this should be done consistently and, as a result, councils have produced their own work-arounds.

132. It is unreasonable to expect local planning administrators to instantaneously read, understand and apply provisions that have already come into effect, while fulfilling all other responsibilities. The period after 6 March 2025 was an extremely difficult period for some councils' planning teams. The difficulties could have been avoided, and systems prepared, had there been reasonable notice of the gazettal.

Are the exemptions provided for in clause 55 of the VPP, as amended by VC267, appropriate?

133. Two of the significant negative consequences created by the Code discussed earlier (being the materially lower standards of environmentally sustainable design in 27 local government areas, and the inability to consider adopted planning scheme amendments that are yet to be approved, especially where these change the ground floor height of a building) are the direct result of an over-application of exemptions in clause 55.

134. We consider the version of clause 55 in amendment VC267 to be worse than the draft version consulted on in 2024 for the reason that the full extent of exemptions listed at the bottom of clause 55[24] were broader than anticipated. Unlike other 'deemed-to-comply' frameworks found in the VPP, the new clause 55 expressly prevents decision-makers from implementing the decision-making requirements of clause 65, and parts of S60 of the Act. This removes the ability, in rare cases where it is warranted, for the decision-maker to take into consideration relevant important information not adequately provided within the 'deemed-to-comply' framework.

[24] See end part of document: Clause 55 as introduced by amendment VC267, 6 March 2025.

135. It is worth setting out clause 65 and 65.01 in full:

> **65 DECISION GUIDELINES**
> Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.
>
> **65.01 APPROVAL OF AN APPLICATION OR PLAN**
> Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:
> - The matters set out in section 60 of the Act.
> - Any significant effects the environment, including the contamination of land, may have on the use or development.
> - The Municipal Planning Strategy and the Planning Policy Framework.
> - The purpose of the zone, overlay or other provision.
> - Any matter required to be considered in the zone, overlay or other provision.
> - The orderly planning of the area.
> - The effect on the environment, human health and amenity of the area.
> - The proximity of the land to any public land.
> - Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
> - Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
> - The extent and character of native vegetation and the likelihood of its destruction.
> - Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
> - 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.
> - The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.
> - The impact the use or development will have on the current and future development and operation of the transport system.
>
> This clause does not apply to a VicSmart application.

136. Section 60 of the Act is where one finds the requirement on a responsible authority, before deciding on an application, to consider:
    a. The objectives of planning in Victoria (S60(1)(b));
    b. Planning scheme amendments that have been adopted by a planning authority (e.g. by a council) but not yet approved by the Minister, if relevant (S60(1A)(h));
    c. 'Section 173' legal agreements that run with the land, if relevant (S60(1A)(i));

    and many others.

137. Responsible authorities are not free to use the clause 65 decision guidelines and Section 60 requirements to concoct reasons to refuse an application. Significant case law and tribunal decisions exist to guide the application of clause 65. Local planners are conscientious about when it is appropriate and absolutely necessary to draw on relevant matters that fall outside the specific control that creates the permit trigger.

138. We therefore strongly object to the approach chosen under VC267 to 'switch off' clause 65 and Section 60. While this may be an appropriate way to handle very simple and unobjectionable applications, it is not an appropriate approach to the assessment of

two or more buildings on a lot. This approach requires that planners neglect their own professional judgment, while keeping very busy explaining to disenchanted members of the public why their objections have been discarded, and why that news could only be relayed after the objectors had fully prepared their objections. The approach is both disempowering and administratively inefficient.

What specific changes would you seek to the amendment?

139. We dispute the basis on which the Code was developed. We agree with Dr Rowley's evidence provided to you on Thursday 17 April 2025 that the existing ResCode was the wrong place to start, and that the views of the ResCode Advisory Committee itself are relevant: "the complex nature of meaningful assessment of proposals cannot be distilled down to a series of quantifiable requirements which do not require the exercise of judgement. The focus of assessment of development proposals should always be on outcomes, not the satisfaction of rules for their own sake."[25]

140. If the Select Committee is interested in recommending improvements to clause 55 as introduced by amendment VC267, we submit that, for the reasons provided earlier in the submission, the following should be considered:
    a. The removal of the following exemptions in clause 55:
        i. The decision guidelines in Clause 65;
        ii. The requirements of Sections 60 and 84B of the Act.
    b. Introducing a meaningful landscaping objective and standard;
    c. Updating the tree canopy objectives and standards to:
        i. Reduce perverse incentives to clear sites of vegetation;
        ii. Require higher canopy coverage in areas with existing dense vegetation or which are capable of sustaining greater coverage; or tie the coverage target to the target found in the relevant local schedule to a residential zone, or proposed local schedule to a residential zone in a seriously entertained planning scheme amendment, or relevant Local Planning Policy, whichever is most relevant for the area;
    d. Raising the Code's environmentally sustainable design-related standards to at least those standards set out in the Local Planning Policies of the 27 municipalities, or preferably to the standards proposed in planning scheme amendments by the same 27 municipalities; or, alternatively and as an interim measure, creating a mechanism in the Code that enlivens the environmentally sustainable design Local Planning Policies in the case of applications made within those municipalities only.

[25] Part 1 Report of the ResCode Advisory Committee, 20 December 2000

Which of the VPP that existed prior to the amendment, or this amendment, or alternative proposals, are appropriate to meet the housing needs of the state and local communities?

141. Codified assessment pathways are not inherently bad. Where designed poorly, however, they can create significant inefficiencies and unintended outcomes. The new Townhouse and Low-Rise Code makes some improvements to the old clause 55 standards, including in relation to solar panels and some other environmentally sustainable design standards. But the choice to reduce the new Code to one-size-fits-all quantifiable requirements for all parts of the state while also removing the ability of applicants and decision-makers to take into consideration matters that will assist in creating higher quality site-responsive design, has created so many new problems that we cannot confidently claim that the new Code is an overall improvement.

142. Ideally, the government would go back to the drawing board and work in partnership with local government to develop a new code, in accordance with a strategy for regulatory expression that is first agreed by an appropriately representative group of planning system designers in state government and planning system administrators in local government working together.

Part 4 – Critique of VC274

143. Amendment VC274 introduces the Precinct Zone (PRZ) to the suite of zones available in the Victoria Planning Provisions. The stated purpose of the amendment is "to support housing and economic growth in priority precincts across Victoria".

144. We support the stated purpose.

145. The amendment does not apply the new zone and overlay to land. The nature of the PRZ is that most detail, and the overarching built form guidance, will be set out in local schedules. The government is currently consulting on structure plans for the Suburban Rail Loop station precincts which, once agreed, will lead to the implementation of the PRZ through local schedules. Only once that occurs will it be possible to conduct an assessment of the PRZ and determine whether it gives proper effect to the objectives of planning in Victoria.

146. As such, our responses to the Select Committee's questions are cursory.

Does the amendment appropriately balance the objectives of planning in Victoria?

147. We do not know yet. The reason for this is that the structure whereby the parent control allows a 'deemed to comply' framework, but requires the local schedules to create the standards that must be complied with, is novel. The BFO introduced by amendment VC257 three days earlier has a very similar regulatory structure.

Does the amendment give proper effect to the objectives of the planning framework established by the Act?

148. We consider that certain planning framework objectives are significantly challenged by the amendment:

Planning framework objective (per S4(2) of the Act)	Commentary
(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	The 'deemed-to-comply' standards effectively remove the ability to consider state and local policy and seriously entertained planning scheme amendments when assessing built form under the PRZ. While non-consideration of other policy may be appropriate for simple and uncontroversial matters, it is unprecedented in the case of higher density applications.
(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 planning framework objective commenced in the Act on 26 March 2025, after VC274 was gazetted. We do not consider that amendment VC274 gives adequate regard to environmentally sustainable design and climate resilience.
(h) to establish a clear procedure for amending planning schemes, with appropriate public participation in decision making	VC274 did not allow for public participation.
(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 PRZ exempts applications from the standard notice and review provisions of the Act, while allowing local schedules to remove the exemption. The blanket exemption from giving notice has not been justified.

Is the amendment likely to create any significant unintended outcomes?

149. We do not know yet, for we have not seen any proposed local schedules to the PRZ.

150. Due to the structure of the PRZ, which is similar to the BFO under VC257 in that the head control pushes the entire built form framework and public benefit uplift framework to local schedules, many of the risks we discuss in relation to VC257 may also apply to VC274: see part 2 of our submission.

Was consultation on the amendment adequate?

151. Amendment VC274 created the parent control for the PRZ only. It is important that broad

public consultation occurs on the structure plans that will lead to the creation of local schedules that will apply the PRZ to land.

152. The MAV is pleased to see the availability of fully expressed draft structure plans, planning scheme amendment documentation and technical reports online for each of the SRL station precincts. This is a significant improvement relative to the Activity Centre draft plans, which is no doubt the product of time available.

153. The affected councils will have far more to say about the merits of the draft structure plans than we will, and we refer you to any submissions they have made.

154. However, we do anticipate two significant emerging problems. The first relates to open space acquisition, expansion and upgrade. The draft structure plans propose local open space within walking distance of new residents and workers, however there is no nexus between the size of the open spaces and the size of the population in the walkable catchment. The basis on which the sizes of the proposed and expanded open spaces have been chosen should be disclosed, so that an assessment can be made about the adequacy of the size of the proposed open spaces. There is not an express commitment in the structure plans that the SRLA, or the Victorian Government otherwise, will be responsible for delivery of all of the new open spaces. We trust that the government will not be expecting councils to use open space reserves to acquire land at greatly inflated prices, when those reserves are already stretched thin with funds earmarked for projects across municipalities.

155. The second relates to infrastructure provision generally. Some of the densities being proposed in the draft structure plans are very significant, the timely delivery of infrastructure and the coordination of infrastructure with land assembly and private development will be important. We are not confident that the SRLA or the Victorian Government has yet quantified the full extent of civil and social infrastructure that it will need to deliver. The final structure plans should be much clearer in their commitments to the timing of infrastructure delivery.

What specific changes would you seek to the amendment?

156. Not applicable.

Which of the VPP that existed prior to the amendment, or this amendment, or alternative proposals, are appropriate to meet the housing needs of the state and local communities?

157. Not applicable.

Part 5 – A better way

158. As stated at the outset of this submission, the MAV supports the objectives of the three amendments that are the subject of the Select Committee's inquiry and it is because of that support, and because local government planners will be the primary administrators of the provisions, that we want to be confident that the provisions will succeed.

159. Critiquing provisions after they have been introduced is of course an inefficient way to go about making changes to the planning system. Ideally, planning system designers in state government and planning system administrators in local government would first achieve a shared understanding about the purposes and strategic directions of the planning system, to inform proposals to reform it. From that basis of shared understanding, government would maximise the likelihood that VPP amendments will achieve widespread support and be efficient, effective and economical.

160. Part 1 of this submission set out the recent history of VPP amendments, showing that opportunities to achieve a shared understanding between state and local government have reduced, not increased, over time.

161. We are certain that there is a better way to go about reforming the planning system. One that still meets the objectives of the Housing Statement to achieve rapid housing supply (insofar as the planning system has a very important role to play among other regulatory, financial and market considerations), but which also achieves other important aims:

    a. the integrity, accountability and transparency of decision-making;
    b. preparing Victoria's land and building stock for climate change and increased incidence of natural disaster;
    c. timely and adequately funded infrastructure to support the building of great places;
    d. administrative efficiency for applicants, decision-makers and third parties; and
    e. above all, a social licence.

162. Meeting Victoria's challenges will require transformative changes to the planning framework, and those transformative changes will succeed if Victorians understand and support them.

163. The MAV recently published *Reforming Victoria's Planning System*,[26] a sector submission on behalf of local government, setting out eight principles for planning system reform. Those principles (to know the history, to collect the evidence, to assemble the right people, to define the problem together, to set the objectives, to agree a strategy for regulatory expression, to resource the reform program, and to continually improve), implemented well, could forge a

[26] MAV, April 2025, *Reforming Victoria's Planning System: local government sector submission*

new consensus and a highly productive and efficient period of planning system reform.

164. We draw your attention to two matters in *Reforming Victoria's Planning System* that are directly relevant to the terms of your inquiry.

165. The first matter is our recommendation found in section 6.8 of the sector submission:

> **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.

166. This recommendation would implement the recommendations of the Victorian Auditor General following the 2008 and 2017 audits of the planning system, to create a much-needed continuous performance review and improvement mechanism. Without such a mechanism, the lack of shared understanding between state and local governments will continue to deteriorate. We provide one option for how a statutory body could be structured in the sector submission.

167. We encourage the Select Committee to revive this long-standing call for a meaningful continuous performance review and improvement mechanism for the VPP, by adopting its own recommendation to the government.

168. The second matter is the local government response to a 'reform option' canvassed by the Department in workshops with local government planners on 24-27 February 2025. This response is found in section 12.5 of the sector submission. The 'reform option' is to 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.

169. Local government supports this idea. We submit that a minimum notice period be a requirement in the Act, be set at 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. Exceptions could be made for amendments of the type listed in the Regulations, such as those that correct errors.

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

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

Councils advise that these administrative burdens have grown considerably since September 2023.

171. These administrative burdens are unnecessary. We are sure that longer lead times and better drafted transitional arrangements will create significant administrative efficiency, in the interests of local and state government, applicants and members of the public.

172. There is no need to wait for changes to the principal Act to apply a 60 day notice period for amendments to the VPP. The government could adopt this policy without delay. Given everything we have set out in our submission about the problems with the process of developing, consulting and approving the VPP amendments that are the subject of the Select Committee's inquiry, we ask the Committee to agree with us that a notice period is essential to facilitate orderly planning in Victoria.

173. We therefore ask the Committee to adopt its own recommendation to the government, to ensure that future VPP amendments are published for at least 60 days prior to their commencement.

End.