

# Planning Panels Victoria

## Bayside Planning Scheme Amendment C187bays Environmentally Sustainable Development local policy

### Panel Report

*Planning and Environment Act 1987*

**23 December 2022**

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### How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.  
[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

### *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

Bayside Planning Scheme Amendment C187bays

Environmentally Sustainable Development local policy

**23 December 2022**



Lisa Kendal, Chair

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## Glossary and abbreviations

Amendment C232morn	Mornington Peninsula Planning Scheme Amendment C232morn
BESS	Built Environment Sustainable Score
CASBE	Council Alliance for a Sustainable Built Environment
Council	Bayside City Council
ESD	Environmentally Sustainable Development
HIA	Housing Industry Association
NCC	National Construction Code
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Bayside Planning Scheme
Practitioner's Guide	<i>Practitioner's Guide to Victorian Planning Schemes, April 2022</i>
Roadmap	<i>Environmentally sustainable development of buildings and subdivisions - A roadmap for Victoria's planning system (Department of Environment, Land, Water and Planning, 2020)</i>
SDA	Sustainable Design Assessment
SMP	Sustainability Management Plan

## Overview

### Amendment summary

The Amendment	Bayside Planning Scheme Amendment C187bays
Common name	Environmentally Sustainable Development local policy
Brief description	Introduction of ESD local policy to ensure development achieves best practice environmental sustainability
Subject land	All land in the municipality of Bayside
Planning Authority	Bayside City Council
Authorisation	10 May 2022, with conditions
Exhibition	7 July to 4 August 2022
Submissions	Two submissions: <ul style="list-style-type: none"> <li>- Council Alliance for a Sustainable Built Environment: supporting</li> <li>- Housing Industry Association: objecting</li> </ul>

### Panel process

The Panel	Lisa Kendal (Chair)
Directions Hearing	Video Conference, 11 November 2022
Hearing	Parties agreed the matter would be considered 'on the papers'
Parties to the Hearing	Bayside City Council, represented by Juliana Aya and Clare Beames Housing Industry Association, represented by Roger Cooper
Citation	Bayside PSA C187bays [2022] PPV
Date of this report	23 December 2022

## Executive summary

Bayside Planning Scheme Amendment C187bays (the Amendment) seeks to introduce a new Environmentally Sustainable Development (ESD) local policy to the Bayside Planning Scheme.

The Amendment seeks to encourage best practice ESD and the planning permit stage and to complement existing policy and other regulations. Specifically, it seeks to:

- introduce Clause 15.01-2L-02 (Environmentally sustainable development)
- renumber Clause 15.01-2L (Energy and resource efficiency) to Clause 15.01-2L-01.

The local policy applies to residential and non-residential development, with specific thresholds for residential development.

The Amendment has been prepared in response to an action in Council's *Climate Emergency Action Plan, 2020* to implement local ESD planning policy in line with the climate emergency.

The Council Alliance for a Sustainable Built Environment supported the Amendment.

The Housing Industry Association objected to the Amendment and raised concerns the local policy is unnecessary, duplicates State planning provisions and brings forward technical assessments to the planning approval stage. It considered building and construction solutions should be managed through the National Construction Code, not the planning system.

State planning policy encourages consideration of ESD, and planning guidance encourages local policies to be integrated under appropriate themes. ESD planning policy framework has evolved and will continue to be refined over time. The recent introduction of State policy does not negate the need for local ESD policy, but does mean the policy needs to be consistent with guidance of the day.

The Panel considers the Amendment is strategically justified and is consistent with:

- the relevant sections of the Planning Policy Framework and planning guidance
- the objectives of the PE Act which seeks to provide for sustainable use and development of land
- Clause 71.02-3 (Integrated decision making) which requires balanced consideration of planning policies "*in favour of net community benefit and sustainable development for the benefit of present and future generations*".

The Panel concludes:

- The residential dwelling threshold of 2 – 9 dwellings is appropriate. The threshold should be included in the 'policy application' section of the policy rather than cross referencing content in 'policy guidelines'.
- There is significant duplication of strategy content between the 'Integrated water management' strategies in the local policy and State policy relating to building design and integrated water management. Strategies should be reviewed to remove duplication with State policy.
- The 'policy guidelines' section should be reviewed to:
  - ensure drafting is consistent with the *Practitioner's Guide to Victorian Planning Schemes*
  - it explicitly describes a measure to achieve the policy objectives and strategies that can be used for assessment purposes.

- The location of documents listed under ‘policy guidelines’ should be reviewed and if retained in the policy ensure drafting is consistent with applicable guidance.

### **Recommendations**

Based on the reasons set out in this Report, the Panel recommends that Bayside Planning Scheme Amendment C187bays be adopted as exhibited subject to the following:

- 1. Amend Clause 15.02-2L-02 (Environmentally sustainable development) to:**
  - a) Set the ‘policy application’ to two or more dwellings.**
  - b) Remove the strategies that duplicate content with Clause 15.01-2S (Building design) and Clause 19.03-3S (Integrated water management).**
  - c) Revise the ‘policy guidelines’ to ensure they are consistent with relevant guidance on drafting.**

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The purpose of the Amendment is to introduce a new Environmentally Sustainable Development (ESD) local policy to the Bayside Planning Scheme (Planning Scheme).

The purpose of the local policy is to encourage:

- best practice ESD at the planning permit stage
- the use of a Sustainable Design Assessment (SDA) and Sustainability Management Plan (SMP), as appropriate.

Specifically, the Amendment proposes to:

- introduce Clause 15.01-2L-02 (Environmentally sustainable development) with objectives relating to:
  - energy performance
  - water resources
  - indoor environment quality
  - storm water management
  - transport
  - waste management
  - urban ecology
- renumber Clause 15.01-2L (Energy and resource efficiency) to Clause 15.01-2L-01.

The local policy applies to residential and non-residential development, with specific thresholds for residential development.

Bayside City Council (Council) is the Proponent for the Amendment.

## 1.2 Background and context

Council explained it had declared a Climate Emergency in 2019 and adopted a *Climate Emergency Action Plan* in 2020. The *Climate Emergency Action Plan* includes actions to:

- implement local ESD planning policy in line with the climate emergency
- provide information and education regarding best practice ESD standards.

## 1.3 Procedural issues

All parties attended the Directions Hearing and agreed for the matter to be considered 'on the papers', and that no site inspection was required.

Directions were issued for an exchange of written material, and the Panel reserved the right to convene a Hearing if it required further information on any critical matters following its review of written material. The Panel wrote to parties on 14 December 2022 confirming it had received the written material as directed, and a Hearing was not required.

## 1.4 Issues raised in submissions

The Council Alliance for a Sustainable Built Environment (CASBE) supported the Amendment and introduction of the proposed local ESD policy into the Planning Scheme.

The Housing Industry Association (HIA) objected to the Amendment and raised concerns the local policy is unnecessary, duplicates State planning provisions and brings forward technical assessments to the planning approval stage. It considered building and construction solutions should be managed through the National Construction Code (NCC), not the planning system.

## 1.5 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, and written submissions and other material presented to it during the Panel process. All submissions and written materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Strategic issues
- Stormwater management provisions
- Form and content of the Amendment.

## 2 Strategic issues

### 2.1 Planning context

Table 1 provides an overview of the planning context relevant to the Amendment. 4.2 provides a summary of key relevant provisions and policies.

Table 1 Planning context

	Relevant references
<b>Victorian planning objectives</b>	- section 4 of the Planning and Environment Act 1987 (PE Act)
<b>Municipal Planning Strategy</b>	- Clause 02.02 (Vision) - Clause 02.03 (Strategic directions)
<b>Planning Policy Framework</b>	- Clauses 11 (Settlement) - Clauses 13 (Environmental risks and amenity) - Clauses 14 (Natural resource management) - Clauses 15 (Built environment and heritage) - Clauses 16 (Housing) - Clauses 17 (Transport) - Clauses 19 (Infrastructure)
<b>Other provisions</b>	- Clause 71.02-3 (Integrated decision making)
<b>Other planning strategies and policies</b>	- Plan Melbourne, Outcome 6 - Directions 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7 - Policies 6.1.1, 6.1.2, 6.4.1, 6.6.1, 6.7.2
<b>Ministerial directions</b>	- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the PE Act - Ministerial Direction 9 (Metropolitan Strategy) - Ministerial Direction 11 (Strategic Assessment of Amendments)
<b>Planning practice notes</b>	- Planning Practice Note 46 (Strategic assessment guidelines)

### 2.2 Relevant planning scheme amendments

#### (i) Amendment VC216

Planning Scheme Amendment VC216 (gazetted 10 June 2022) made changes to all planning schemes to support ESD. Amendment VC216 forms part of stage one implementation of *Environmentally sustainable development of buildings and subdivisions - A roadmap for Victoria's planning system* (Department of Environment, Land, Water and Planning, 2020) (Roadmap).

Amendment VC216 implements actions in *Plan Melbourne 2017-2050*, specifically:

- Action 80 of Outcome 6 (Melbourne is a sustainable and resilient city):  
Review the Victorian planning and building systems to support environmentally sustainable development outcomes for new buildings to consider their energy, water and waste management performance.

- Actions 89, 91, 94, 96, 97 and 101 which relate to water management, cooling and greening, air and noise pollution, and recycling and resource recovery.

In its submission, Council explained the changes to the Planning Scheme introduced by Amendment VC216. Council noted the most applicable change to the Amendment is building design policy which was modified to include ESD in the objective and strategies.

## (ii) Amendment C195bays

Council advised it is collaborating with CASBE and 23 Councils across Victoria in Stage 2 of the *Elevating Targets Planning project for a Sustainable Built Environment*.

Planning Scheme Amendment C195bays will seek to introduce a new particular provision relating to ESD, including objectives and standards to *“implement measures that facilitate best practice ESD and support zero carbon development outcomes”*.

## 2.3 Practitioner’s Guide

*A Practitioner’s Guide to Victorian Planning Schemes Version 1.5*, April 2022 (Practitioner’s Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.

## 2.4 Strategic justification

### (i) Submissions

Council submitted the changes introduced by Amendment VC216 supported the Amendment, including introduction of a new purpose at Clause 01 *“to support responses to climate change”*. Further:

The amendment reinforces the necessity for local ESD policies, because of the current lack of more comprehensive statewide ESD policies.

Council provided a list of the planning schemes with local ESD policies. Council submitted there are now 22 Council’s with local ESD policy similar to that proposed in the Amendment, and which have been tested through various planning panel and advisory committee processes.

Council advised that Mornington Peninsula Planning Scheme Amendment C232morn (Amendment C232morn), which is equivalent to Amendment C187bays, had recently been referred to a planning panel to consider issues, including issues raised by HIA. At the time of Council’s submission to the Amendment, the panel report for Amendment C232morn had not been released.

Mornington Peninsula Shire Council did not support the issues raised in HIA’s submission. Council outlined the response from Mornington Peninsula Shire Council to HIA’s submission, and advised it adopted the same position on issues raised by HIA.

Council submitted the HIA position had not been supported in previous planning scheme amendments, and provided examples and reasons. It provided an excerpt from Darebin and Manningham Planning Schemes Amendment GC42 panel report (July 2016) which stated (in summary):

- there is a strong legislative and policy framework supporting the need for sustainable development, which recognises there is a role for both the building and planning systems
- the role of planning in achieving sustainability is limited in that it can only influence development that requires a planning permit
- as the building regulatory system is generally not involved in the initial design stage of a development can result in a less than desirable outcome
- involvement of planning at the initial site planning stage may assist at the building approval stage
- until a State-wide approach is adopted, it is appropriate to introduce local ESD policies.

Council did not accept HIA's assertion that the policy imposes requirements and brings forward technical assessment to the planning stage. It submitted the NCC and planning policy have different intent; the NCC establishes minimum standards for energy performance and planning policy intends to achieve best practice ESD. Best practice ESD outcomes are encouraged on a discretionary and flexible basis, and the new local policy will not impose requirements.

Council cited the planning panel report for Darebin and Manningham Planning Scheme Amendment GC42 (2016), which stated (in summary):

- an integrated building and planning approach is required to achieve sustainable outcomes
- the proposed local policies would not contravene the NCC but would build upon it.

Council acknowledged that there may be time and cost implications resulting from the local policy and associated assessments, but considered these were justified by the savings and environmental benefits over the life of the building.

Council did not propose any changes to the Amendment in response to submissions.

HIA requested the Amendment be abandoned. It preferred consistent State-wide policies be introduced to *"set consistent expectations for building design and treatment of the natural environment for all applicants"*.

HIA objected to the Amendment on the basis *"it is not the role of planning instrument to introduce new application requirements for construction design outcomes already regulated by the [NCC]"*. It acknowledged Council's commitment to addressing climate change, but did not consider the proposed planning policy, which duplicates building matters and brings forward technical assessment to the planning stage, appropriate.

It submitted:

- the building and construction solutions should be managed through the NCC, not the planning system
- a planning instrument should not impose higher standards than the NCC
- a construction standard mandate at the planning permit stage is not appropriate when the assessment will differ at the building permit stage, potentially resulting in significant rework

- multiple and unnecessary layers of planning permit requirements are contributing to time and cost blowouts which are burdening the residential sector.

HIA was concerned the proposed local policy had not been compared for consistency with Amendment VC216.

HIA submitted that since the previous planning panels referred to by Council supporting local ESD policies, planning and building codes have “*substantially advanced to hold ESD outcomes to a higher standard*”. The NCC had recently been upgraded to mandate minimum 7-star energy homes and “*it is outdated to label a ‘7-star’ energy rating minimalistic*”. A 7-star energy rating requires a holistic home design, including consideration of passive solar access, design, materials and energy efficiency of appliances.

In support of this position, HIA submitted a table comparing ESD requirements across State and local planning and building regulations. HIA explained the table shows the equivalent of 80 per cent of the Built Environment Sustainable Score (BESS) is achieved by existing and proposed policy (HIA noted it used BESS as an example as it was established by CASBE).

## **(ii) Discussion**

The purposes of a planning scheme include providing for the implementation of State, regional and local planning policies and to support responses to climate change. State planning policy encourages consideration of ESD. For example, Clause 15 (Built environment and heritage) states planning should promote development that is environmentally sustainable and minimise detrimental impacts on the built and natural environment. The *Practitioner’s Guide to Victorian Planning Schemes Version* (Practitioner’s Guide) includes a definition of ‘promote’ as “*to further the growth, development, progress of; encourage*”.

It is clearly the role of planning to actively encourage and facilitate sustainable development and support responses to climate change.

The Panel agrees with Council that the planning and building regulations are complementary and it is appropriate to have ESD requirements in both. The triggers for assessment will vary and an integrated approach is required to ensure ESD assessment through a range of development scenarios.

According to Council’s submission, 22 planning schemes include ESD local policies, of which 16 have been introduced since 2016. Stage one of the Roadmap was implemented through Amendment VC216 and a future stage two is intended to update particular provisions. Council is working with CASBE and other Councils to implement further planning scheme measures through Amendment C195bays.

The Roadmap acknowledges that since the *Planning Panels Victoria Advisory Committee on Environmentally Efficient Design Local Policies* was prepared in 2014, a number of largely standardised local policies have been introduced. It states the key difference between the local policies is the size of development that triggers provision of an SDA or SMP to support assessment of a planning permit.

The Practitioner’s Guide states ESD is addressed throughout the Planning Policy Framework under a range of different themes, and local policies about ESD are encouraged to be integrated under the appropriate themes.

The planning policy framework for ESD has evolved and will continue to be refined over time. The recent introduction of State policy does not negate the need for local ESD policy, but does mean the policy needs to be consistent with guidance of the day. The Panel addresses specific issues relating to consistency with guidance in other chapters of this Report.

The Panel finds, consistent with the Darebin and Manningham Planning Schemes Amendment GC42 panel report, that the local approach to ESD should be further reviewed at a time there is a comprehensive State-wide approach. The Panel notes that various forms of local ESD policy exist in planning schemes, which reflect the State policy and guidance in place at the time.

The Panel does not accept HIA's submissions that the local policy is not justified on the basis it duplicates a number of proposed policies. These policies are not yet in place, and it is not known when they will be introduced or the form they will take.

The Panel agrees with Council that the local policy is intended to encourage ESD best practice outcomes, and does not impose requirements or bring forward technical assessments to the planning stage. It is appropriate for policy to encourage development that exceeds minimum standards, where complementary and justified. It is not the role of policy to introduce application requirements. The Panel considers there may be some improvements to drafting to ensure this is clear (see Chapter 4).

No evidence was presented to the Panel to substantiate the claim that proposed local planning policy considerations will result in unreasonable cost and time blowouts. The Panel agrees with Council there is likely to be a positive cost benefit ratio for buildings that incorporate ESD measures, resulting in efficiencies over the life of the building. Consistent with the principles underlying ESD measures which are intended to reduce resource demands, cost benefit assessment must go beyond the construction process.

The Panel considers the Amendment consistent with:

- the objectives of the PE Act which seeks to provide for sustainable use and development of land
- Clause 71.02-3 (Integrated decision making) which requires balanced consideration of planning policies *"in favour of net community benefit and sustainable development for the benefit of present and future generations"*.

### **(iii) Conclusions**

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to the recommendations as discussed in the following chapters.

## 3 Stormwater management provisions

### (i) What is proposed?

Clause 15.01-2L-02 (Environmentally sustainable development) includes the following strategies:

#### **Integrated water management**

Reduce total operating potable water use through appropriate design measures such as water efficient fixtures, appliances, equipment, irrigation and landscaping.

Encourage the appropriate use of alternative water sources (including greywater, rainwater and stormwater).

Incorporate best practice water sensitive urban design to improve the quality of stormwater runoff and reduce impacts on water systems and water bodies.

It also contains 'policy guidelines' relating to sustainable design assessment and sustainability management plans using STORM/MUSIC or other methods and a number of documents listed as assessment tools.

### (ii) The issue

The issue is whether existing Planning Scheme provisions satisfy ESD stormwater assessment requirements.

### (iii) Submissions

HIA submitted that existing State planning policy addressed identified gaps in ESD requirements. It cited stormwater requirements at Clause 53.18 which require new development to consider the retention and reuse of stormwater.

Council submitted Clause 53.18 is "*an overarching stormwater management policy which includes non-residential development*" while the proposed local ESD policy provides a more complete approach to environmentally sustainable residential development. Both are relevant and apply in assessing appropriate residential development.

### (iv) Discussion

HIA raised the issue of duplication with State planning policy, but referred to the particular provision relating to stormwater as an example. The Panel has considered the issue of duplication with both the particular provision and State policy.

The purpose of Clause 53.18 (Stormwater management in urban development) is to:

ensure that stormwater in urban development, including retention and reuse, is managed to mitigate the impacts of stormwater on the environment, property and public safety, and to provide cooling, local habitat and amenity benefits.

Among other things, it applies to an application to construct a building (subject to an extensive list of exclusions, such as applications to construct or extend a dwelling in a residential zone).

The Panel agrees with Council that the local policy intends to introduce a complete approach to consideration of ESD for residential development, and Clause 53.18 (Stormwater management in urban development) is a particular provision that complements planning policy.

The Practitioner's Guide provides guidance that a local planning policy must not duplicate State policy. The Panel compared the strategies in the local policy with existing State policies at Clause 15.01-2S (Building design) and Clause 19.03-3S (Integrated water management) (see Table 2).

Table 2 Comparison of stormwater policy

Proposed Clause 15.01-2L - 02 (Environmentally sustainable development) Integrated water management strategies	Relevant Clause 15.01-2S (Building design) strategies	Relevant Clause 19.03-3S (Integrated water management) strategies
Reduce total operating potable water use through appropriate design measures such as water efficient fixtures, appliances, equipment, irrigation and landscaping.		Plan and coordinate integrated water management, bringing together stormwater, wastewater, drainage, water supply, water treatment and re-use, to: <ul style="list-style-type: none"> <li>- Manage and use potable water efficiently</li> <li>- Reduce pressure on Victoria's drinking water supplies.</li> </ul>
Encourage the appropriate use of alternative water sources (including greywater, rainwater and stormwater).	Encourage water efficiency and the use of rainwater, stormwater and recycled water.	Facilitate use of alternative water sources such as rainwater, stormwater, recycled water and run-off from irrigated farmland.
Incorporate best practice water sensitive urban design to improve the quality of stormwater runoff and reduce impacts on water systems and water bodies.	Minimise stormwater discharge through site layout and landscaping measures that support on-site infiltration and stormwater reuse.	Ensure that development protects and improves the health of water bodies including creeks, rivers, wetlands, estuaries and bays by: <ul style="list-style-type: none"> <li>- Minimising stormwater quality and quantity related impacts</li> <li>- Filtering sediment and waste from stormwater prior to discharge from a site.</li> <li>- [etc]</li> </ul>

There is significant overlap in policy content relating to stormwater. The strategies in the local policy should be reviewed to remove duplication with State policy.

Further, the following document is listed in both the local ESD policy (under policy guidelines) and Clause 19.03-3S (under policy documents):

*Urban Stormwater - Best Practice Environmental Management Guidelines* (Victorian Stormwater Committee, 1999).

This is discussed further in Chapter 4.1.

## (v) Conclusions and recommendations

The Panel concludes:

- There is significant duplication of strategy content between the 'Integrated water management' strategies in the local policy and State policy relating to building design and integrated water management.
- Strategies should be reviewed to remove duplication with State policy.

The Panel recommends:

- 1. Amend Clause 15.02-2L-02 (Environmentally sustainable development) to:**
  - a) Remove the strategies that duplicate content with Clause 15.01-2S (Building design) and Clause 19.03-3S (Integrated water management).**

## 4 Form and content of the Amendment

### 4.1 Policy guidelines

#### (i) Discussion

HIA was concerned the policy introduces application requirements.

The Panel notes the Explanatory Report states:

The proposed policy specifies which types of development must respond to the objectives of the Policy, requiring applications to be accompanied by appropriate supporting information. Dependent on the scale of development, application requirements include:

- plans (layout and elevations) and Supporting Documents showing ESD initiatives, or
- a [SDA], or
- a [SMP].

The policy lists various assessment tools and guidelines which may be used to assess how a development addresses the objectives of the policy.

The Practitioner's Guide explains that legibility of the Planning Policy Framework relies on each element being properly applied. For example, 'policy guidelines':

- provide guidance on how a strategy can be achieved
- gives explicit or prescriptive measures
- typically represents one way of achieving an acceptable outcome
- are only required in exceptional circumstances
- are directive, and do not consist of neutral considerations
- are not decision guidelines or application requirements.

Clause 15.01-2L-02 (Environmentally sustainable development) contains 'policy guidelines', for example for residential development:

#### Residential

A Sustainable Design Assessment (including an assessment using BESS, STORM or other methods) for:

- 2 - 9 dwellings.
- A building used for accommodation other than dwellings with a gross floor area between 100 square metres to 1000 square metres.
- An extension to an existing residential building used for accommodation other than dwellings creating between 100 square metres to 1000 square metres of additional gross floor area (excluding outbuildings).

A Sustainability Management Plan (including an assessment using BESS/Green star, STORM/MUSIC or other methods) and a Green Travel Plan for:

- 10 or more dwellings.
- A building used for accommodation other than dwellings with a gross floor area of more than 1000 square metres.
- An extension to an existing residential building used for accommodation other than dwellings creating more than 1000 square metres of additional gross floor area (excluding outbuildings).

The drafting of 'policy guidelines' in the proposed local policy is confusing and does not conform with guidance in the Practitioner's Guide. The 'policy guidelines' do not clearly explain how the policy objectives or strategies may be satisfied, or establish a measure to assist decision makers with assessment. The 'policy guidelines' read as if they are application requirements.

The description of what the Amendment does in the Explanatory Report adds to this confusion by stating the policy includes ‘application requirements’.

Additionally, the ‘policy guidelines’ includes a list of documents to be considered in support of an SDA or SMP. Consistent with the comments above, the Panel is not satisfied these should be included under ‘policy guidelines’ as they do not explain how the local policy objectives may be implemented. They are intended as guidance for preparation of an ESD assessment or management plan.

The Practitioner’s Guide explains that planning policy may include ‘policy documents’ as incorporated, background or other documents, such as an Act. Subject to further review, the listed documents may be suitable for inclusion in the policy as background documents under the heading ‘policy documents’.

## **(ii) Conclusions and recommendation**

The Panel concludes:

- The ‘policy guidelines’ section should be reviewed to ensure:
  - drafting is consistent with the Practitioner’s Guide
  - it explicitly describes a measure to achieve the policy objectives and strategies that can be used for assessment purposes
- The location of documents listed under ‘policy guidelines’ should be reviewed and if retained in the policy, drafting should be consistent with relevant guidance.

The Panel recommends:

2. **Amend Clause 15.02-2L-02 (Environmentally sustainable development) to:**
  - a) **Revise the ‘policy guidelines’ to ensure they are consistent with relevant guidance on drafting.**

## **4.2 Policy application**

### **(i) Issue**

The issue is whether the policy threshold should be increased from 2 – 9 dwellings to 3 – 9 dwellings.

### **(ii) Submissions**

HIA requested that for residential applications the threshold of how many dwellings it applies to not be less than 3 – 9 dwellings. It submitted this is consistent with the recently adopted Kingston Planning Scheme.

Council submitted the threshold number of dwellings in other local ESD policies varied from one to three, with more than half having a threshold of two. Consistent with the 2014 Advisory Committee findings which recognised the benefit of Council’s establishing thresholds relevant to local conditions, it explained the bulk of new residential development permit applications in Bayside are for two dwellings on a lot. It submitted:

A threshold of two dwelling is seen as fair and reasonable for the proposed policy 15.01-2L-02 and will enable better ESD outcomes for Bayside.

**(iii) Discussion**

It is appropriate for the assessment threshold to be informed by local circumstances. HIA did not provide any evidence or justification for its position other than reference to one other local ESD policy in a different municipality.

As Council advised, planning permit applications for residential development in Bayside are predominantly for two dwellings. The Panel accepts the threshold of two dwellings is appropriate.

The Panel observes the thresholds are currently included under the heading 'policy guidelines', while the clause relating to 'policy application' states:

This policy applies to residential and non-residential development, excluding subdivision, in accordance with the thresholds detailed in this policy.

Consistent with the Panel's findings in Chapter 4.1, 'policy guidelines' are discretionary examples of how a policy may be achieved. The reliance of the policy application on 'policy guidelines' is poor drafting. It would be appropriate to include the threshold in the 'policy application' section of the policy, for example:

- This policy applies to [applications for residential development of two or more dwellings](#) and non-residential development, excluding subdivision, ~~in accordance with the thresholds detailed in this policy.~~

**(iv) Conclusion and recommendation**

The Panel concludes:

- The residential dwelling threshold of 2 – 9 dwellings is appropriate.
- The threshold should be included in the 'policy application' section of the policy rather than cross referencing content in 'policy guidelines'.

The Panel recommends:

- 3. Amend Clause 15.02-2L-02 (Environmentally sustainable development) to:**
  - a) Set the 'policy application' to two or more dwellings.**

## Appendix A Document list

No.	Date	Description	Provided by
1	15 Nov 2022	Directions letter and distribution list	Panel
2	24 Nov 2022	Council submission, with attachments: <ul style="list-style-type: none"> <li>- Chronology of events</li> <li>- Climate Emergency Plan 2020-2025</li> <li>- Letter of authorisation from DELWP, 10 May 2022</li> <li>- CASBE submission, 7 Sept 2022 and HIA submission, 13 July 2022</li> <li>- Council agenda and minutes, 20 Sept 2022</li> </ul>	Council
3	25 Nov 2022	HIA submission	HIA
4	8 Dec 2022	Council closing submission	Council

## Appendix B Planning context

### B:1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

#### Victorian planning objectives

The Amendment responds to the following State policy objectives set out in section 4 of the PE Act:

- Section 4(1)(a) – to provide for the fair, orderly, economic and sustainable use, and development of land;
- Section 4(1)(b) – to provide for the protection of natural and man made resources and the maintenance of ecological processes and genetic diversity;
- Section 4(1)(c) – to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
- Section 4(1)(f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e) and
- Section 4(1)(g) – to balance the present and future interests of all Victorians.

#### Clause 2 (Municipal Planning Strategy)

Clause 02.02 (Vision) states:

Bayside will be a city which protects and enhances the quality and character of the natural and built environment through environmentally sustainable development and management of land.

Bayside will be an environmentally focussed city in which its natural resources are valued, present needs are met and development is responsibly managed for the benefit of current and future generations.

Clause 02.03 (Strategic directions) states:

Council is committed to enhancing the sustainability of the built environment by encouraging development to incorporate environmentally sustainable design principles and natural resource management to benefit current and future generations.

Council seeks to:

- Reduce greenhouse gas emissions and car dependence by encouraging more environmentally sustainable development.

The Amendment supports the MPS by reducing greenhouse gas emissions and car dependence by encouraging more environmentally sustainable development.

#### Clause 11 (Settlement)

The Amendment supports Clause 11 by facilitating sustainable development and recognising the need and contributing to, for example:

- health, wellbeing and safety
- adaptation to changing technology
- a higher standard of environmental sustainability, urban design and amenity
- climate change adaptation and mitigation
- prevention of pollution
- protecting, conserving and improving natural resources

- waste minimisation and resource recovery.

### **Clause 12 (Environmental and landscape values)**

The Amendment supports Clause 12 by protecting and conserving biodiversity and environmentally sensitive areas.

### **Clause 13 (Environmental risk and amenity)**

The Amendment supports Clause 13 by protecting and conserving biodiversity and environmentally sensitive areas.

### **Clause 14 (Natural resource management)**

The Amendment supports Clause 14 by supporting the conservation and wise use of natural resources, promoting environmentally sustainable development and minimising detrimental impacts on the built and natural environment.

### **Clause 15 (Built environment and heritage)**

The Amendment supports Clause 15 by recognises the role of urban design, building design, heritage and energy and resource efficiency in delivering liveable and sustainable cities, towns and neighbourhoods.

### **Clause 16 (Housing)**

The Amendment supports Clause 16 by ensuring that long term sustainability of housing is achieved using best practice in environmentally sustainable development from the design stage through to construction.

### **Clause 18 (Transport)**

The Amendment supports Clause 18 by contributing to the creation of safe integrated and sustainable transport system.

### **Clause 19 (Infrastructure)**

The Amendment supports Clause 17 by contributing to the facilitation of update of renewable energy.

## **B:2 Other planning scheme provisions**

Clause 71.02-3 (Integrated decision making) states:

Victorians have various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

The Planning Policy Framework operates together with the remainder of the scheme to deliver integrated decision making. Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

Planning authorities should identify the potential for regional impacts in their decision making and coordinate strategic planning with their neighbours and other public bodies to achieve sustainable development and effective and efficient use of resources.

## B:3 Other relevant planning strategies and policies

### Plan Melbourne

*Plan Melbourne 2017-2050* sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved.

Council submitted the Amendment will implement various Plan Melbourne directions and policies included in Table 3 by introducing obligations for energy performance, integrated water management, indoor environment quality, transport, waste management and urban ecology.

**Table 3** Relevant parts of Plan Melbourne – Outcome 6 – Melbourne is a sustainable and resilient city

Directions	Policies
6.1 - transition to a low-carbon city to enable Victoria to achieve its target of net zero greenhouse gas emissions by 2050	6.1.1 - improve energy, water and waste performance of buildings through environmentally sustainable development and energy efficiency upgrades 6.1.2 - facilitate the uptake of renewable energy technologies
6.2 - reduce the likelihood and consequences of natural hazard events and adapt to climate change	
6.3 - integrate urban development and water cycle management to support a resilient and liveable city	
6.4- make Melbourne cooler and greener	6.4.1 - support a cooler Melbourne by greening urban areas, buildings, transport corridors and open spaces to create an urban forest
6.5 - protect and restore natural habitats	
6.6 - improve air quality and reduce the impact of excessive noise.	6.6.1 - reduce air pollution emission and minimise exposure to air pollution and excessive noise.
6.7 - reduce waste and improve waste management and resource recovery	6.7.2 - improve waste and resource recovery systems to meet the logistical challenges of medium- and higher-density developments

## B:4 Ministerial Directions and Planning Practice Notes

The Ministerial Direction on Form and Content of Planning Schemes provides guidance on the preparation and presentation of planning scheme content.

Ministerial Direction 9 (Metropolitan planning strategy) seeks to ensure that planning scheme amendments have regard to the Metropolitan Planning Strategy (Plan Melbourne 2017-2050 including the 2019 addendum).

Ministerial Direction 11 (Strategic Assessment of Amendments) seeks to ensure a comprehensive strategic evaluation of a planning scheme amendment and the outcomes it produces.

Planning Practice Note 46 provides guidance on what should be considered as part of Ministerial Direction 11.