

# **Amendment C187bays to the Bayside Planning Scheme**

**Submission**

**Bayside City Council**

**Date:** November 2022



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## List of Attachments

- A. C187bays Chronology of events
- B. Climate Emergency Action Plan
- C. Amendment C187bays Authorisation Letter
- D. Submissions made to Amendment C187bays
- E. 20 September 2022 Ordinary Meeting of Council Report and Minutes

# INTRODUCTION

1. This submission is made on behalf of Bayside City Council. Council is the Planning Authority for the purposes of Amendment C187bays to the Bayside Planning Scheme ('the Scheme').
2. In accordance with the direction of the Panel, this submission includes, but is not limited to, the following matters:
  - Background to the Amendment, including:
    - The chronology of events
    - Details of consultation with relevant stakeholders
  - Strategic context and assessment, including:
    - An assessment against relevant planning policies and strategies
    - An explanation of how the local policy provisions relate to State planning policy introduced through Amendment VC216
  - Relevant background technical reports and how they informed the amendment.
  - An overview of any other relevant Amendments in progress or recently approved
  - In response to the Housing Industry Association submission:
    - Provide details of how other identified Councils undertaking similar planning scheme amendments have responded to the issues raised by the Housing Industry Association, including copies of relevant planning panel reports if these have been issued
    - Explain how the proposed local policy provisions relate to National Construction Code requirements
  - Changes to the Amendment in response to submissions
  - Final position on the Amendment.

## **The Amendment**

3. The Amendment seeks to provide guidance for Environmentally Sustainable Development (ESD) through the introduction of a new Clause 15.02-2L-02 (Environmentally Sustainable Development) into the Scheme
4. More specifically, the Amendment proposes to:
  - encourage the achievement of Best Practice ESD at the planning permit stage; and
  - encourage the use of Sustainable Design Assessments and Sustainability Management Plans, as appropriate.

## **STRATEGIC BACKGROUND**

### **Bayside Strategic Context**

5. In accordance with Direction 5 (b) (ii) of the Directions a chronology of key events Relevant to the Amendment can be found at Appendix A.
6. In December 2019, Council declared a Climate Emergency.
7. Council adopted its Climate Emergency Action Plan in September 2020 (Appendix B). The Climate Emergency Action Plan has 34 actions including:
  - Action 4.1 - Implement a local Environmentally Sustainable Development Planning Policy in line with the climate emergency; and
  - Action 4.4 - Provide information and education regarding best practice Environmentally Sustainable Development standards.

# PREPARATION AND EXHIBITION OF THE AMENDMENT

## Request to prepare the Amendment

8. Council adopted a Climate Emergency Action Plan on 15 September 2020. The Strategic Planning team is the responsible service area of Council to deliver Action 4.1 Implement a local Environmentally Sustainable Development Planning Policy in line with the climate emergency,
9. On 15 June 2021 at a Council Meeting officers provided an update in relation to the introduction of an Environmentally Sustainable Development (ESD) Policy into the Bayside Planning Scheme. Council was informed at this meeting that in January 2021 DELWP had published the 'Environmentally Sustainable Development of Buildings and Subdivisions: A Roadmap for Victoria's Planning System'.
10. This roadmap was intended to respond to local government's advocacy for greater policy action to address the climate emergency and is one of the State actions being taken to increase renewable energy use and reduce Victoria's carbon emissions. At the time of the June 2021 meeting, the outcomes of a two-stage process outlined by the roadmap were thought to be pending. It was considered that there would be little benefit in drafting a local ESD Policy until greater clarity was provided in relation to the minimum State provisions.
11. However, after that time the State Government Road map stalled, and Council decided to keep pursuing a local ESD Policy.
12. The Amendment documents were subsequently submitted to the Minister for Planning for authorisation on 13 April 2022.

## Authorisation

13. Ministerial Authorisation to prepare Amendment C187bays granted on 10 May 2022 with the following conditions:
  - Renumber the existing Clause 15.01-1L (Energy and resource efficiency) and the proposed Clause 15.01-L to a consistent method, such as 'Clause 15.01-1L-01' and 'Clause 15.01-1L-02' respectively.

- Revise proposed Clause 15.01-L of the planning scheme as per the tracked changes version attached to this letter.
14. Changes were made to the amendment documentation in accordance with the letter.
  15. A copy of the authorisation letter is included at Appendix C.

## **Exhibition**

16. The Amendment was exhibited between 7 July 2022 until 4 August 2022
17. Exhibition followed the statutory process prescribed by the *Planning and Environment Act 1987*, as follows:
  - Notice of preparation of an Amendment, published on Council's website and in the Government Gazette; on 7 July 2022;
  - Notices and advertisements in The Age; on 7 July 2022;
  - Notice to the prescribed Ministers under the Act, the relevant referral authorities affected by the Amendment and other State and Federal Members on 7 July 2022; and
  - Notice to relevant public authorities on 7 July 2022.
18. Council received a total of 2 submissions in response to the exhibition of the Amendment. One 'in support' and one 'not support'. These are addressed later in this report (Appendix D)

## **Request the appointment of a Planning Panel**

19. Pursuant to Section 22 of the *Planning and Environment Act 1987*, all submissions were considered by Council at its Ordinary Meeting of 20 September 2022 (Appendix E). It was resolved that Council:
  - Requests the Minister for Planning to appoint an independent Planning Panel to consider the submissions received for Amendment C187bays in accordance with Section 23(1)(b) of the *Planning and Environment Act 1987*.

## STRATEGIC CONTEXT AND ASSESSMENT

### Planning and Environment Act 1987

20. Section 4(1) of the Act sets out the objectives of planning in Victoria. The amendment supports the objectives at:
- 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.
21. Section 4(2) of the Act sets the objectives of the planning framework. The amendment supports the objectives at:
- Section 4(2)(a) – to ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels;
  - Section 4(2) (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;
  - Section 4(2) (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;
  - Section 4(2) (e) to facilitate development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes; and
  - Section 4(2) (g) to encourage the achievement of planning objectives through positive actions by responsible authorities and planning authorities

## Plan Melbourne 2017-2050

22. *Plan Melbourne 2017-2050: Metropolitan Planning Strategy* outlines principles that underpin a long-term vision for Melbourne, outcomes to drive Melbourne as a competitive, liveable and sustainable city, directions which set out how these outcomes can be achieved and policies which outline how each outcome will be approached, delivered and achieved.
23. Plan Melbourne acknowledges that Melbourne is expected to grow by 3.4 million people to a population of almost 8 million by 2051, with Victoria's growth expected to reach 10.1 million. A population increase of that magnitude requires another 1.6 million dwellings and 1.5 million jobs. It also acknowledges that the global economy has changed rapidly in the past two decades, becoming more digital and mobile through digital disruption, more competitive through the further industrialisation of nations such as China, and more uncertain through the impact of climate change.
24. These changes are expected to accelerate in the coming years, testing the capabilities of nations and states with aging populations.

25. ***Outcome 6 – Melbourne is sustainable and resilient city***

*The Melbourne of 2050 needs to have become a low-carbon city designed to cope with the effects of climate change.*

*To become more sustainable and resilient Melbourne will reduce greenhouse gas emissions to net zero emissions by 2050 while creating new jobs, driving innovation within new and traditional industries and reducing household energy bills. In addition, areas at risk from natural hazards will be identified and planned for.*

*Urban areas will be designed to encourage more active modes of transport and be less car dependent. Buildings will be designed to improve energy efficiency, collect and reuse water and to generate energy from local renewable sources and distributed energy technologies.*

26. **Direction 6.1** is to '*transition to a low-carbon city to enable Victoria to achieve its target of net zero greenhouse gas emissions by 2050*' This direction acknowledges that Melbourne must reduce energy demand, improve energy efficiency and increase the share of renewable energy. It is acknowledged that Plan Melbourne will embed renewable energy and energy efficiency consideration in the land use planning system and precinct structure planning process.

27. **Policy 6.1.1** - *'is to improve energy, water and waste performance of buildings through environmentally sustainable development and energy efficiency upgrades'*

This policy acknowledges the many local councils are already incorporating environmentally sustainable development considerations into their planning processes. However, there is a need for a statewide approach to achieve greater consistency and simplicity.

A review to strengthen the planning frameworks is required for improving the efficiency of new and existing building and early consideration of sustainability in the planning process

28. **Policy 6.1.2** – *'Facilitate the uptake of renewable energy technologies'* - To support the government's targets for renewable energy generation, planning policy and controls will be strengthened to remove barriers and increase the uptake of renewable energy on a site-by-site and neighbourhood level.

29. **Direction 6.2** – *'Reduce the likelihood and consequences of natural hazard events and adapt to climate change'* – This direction acknowledges that land use planning plays a central role in reducing a community's level of exposure to a natural hazard by influencing where and how a development occurs.

30. **Direction 6.3** is to *'integrate urban development and water cycle management to support a resilient and liveable city'* this direction acknowledges that planning controls will be updated to require the whole water cycle early in the planning process

31. **Direction 6.4** -to *'make Melbourne cooler and greener'* It is acknowledged that greening the city can provide cooling benefits and increase resilience to extreme heat event. Melbourne needs to maintain and enhance its vegetation on properties including roofs, facades and walls.

32. **Policy 6.4.1** – *Support a cooler Melbourne by greening urban areas, buildings, transport corridors and open spaces to create an urban forest* – Its stated that greening must be integrated into planning frameworks and balanced with safety risk priorities. Too often, trees and greening are an afterthought in the planning and design of urban areas. In established areas such as Bayside tree canopy is all too often lost through the replacing of single dwelling and multi dwelling developments.

33. **Direction 6.5** *Protect and restore natural habitats* – It states that as Melbourne grows, habitat loss and waterway degradation can pose a significant threat to native

flora and fauna populations. A network of greenspaces including backyards and gardens provide a habitat for biodiversity conservation.

34. **Direction 6.6** – *Improve air quality and reduce the impact of excessive noise.* - It is acknowledged that Air quality and noise impacts should be a fundamental consideration in the design and assessment of all new developments.
35. **Policy 6.6.1** – *Reduce air pollution emission and minimise exposure to air pollution and excessive noise.* – The policy that appropriate planning measures play a key role in minimising urban noise and air pollution and safeguarding community health and amenity.
36. **Direction 6.7-** *Reduce waste and improve waste management and resource recovery* – The direction acknowledges that waste and resource recovery infrastructure planning must be effectively integrated with land-use planning to provide long-term certainty and to manage potential conflicts with incompatible nearby land uses.
37. **Policy 6.7.2** – *Improve waste and resource recovery systems to meet the logistical challenges of medium- and higher-density developments* – This policy recognises that most high-rise residential and mixed-use developments, as well as some medium-density residential developments, lack appropriate waste and resource recovery infrastructure and services. To address this waste and resource recovery infrastructure and waste service requirements need to be appropriately addressed within planning provisions for medium- and higher-density residential and mixed-use developments.
38. Amendment C187bays will implement these directions and policies by introducing Clause 15.02-2L-02 Environmentally sustainable development. This local policy will apply to residential and non-residential developments within the municipality of Bayside to achieve best practice in environmentally sustainable development from the design stage to construction and operation.

This will include obligations for energy performance, integrated water management, indoor environment quality, transport, waste management and urban ecology.

## **Planning Policy Framework**

39. Amendment C187bays implements the relevant objective of the PPF as outlined below.

## Clause 2 Municipal Planning Strategy

### 40. **Clause 02.02 – Vision**

*“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.”*

41. **Clause 02.03-4 – Built Environment and heritage – Sustainability.** States that 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.
42. Amendment C187 addresses this Clause by introducing strategies that encourage sustainable development. These requirements include:
- Energy performance
  - Integrated water management
  - Indoor environment quality
  - Transport
  - Waste Management
  - Urban ecology
43. **Clause 11 - Settlement** acknowledges that ‘planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and

community facilities and infrastructure. Planning is to recognise the need for, and as far as practicable contribute towards:

- Health, wellbeing and safety;
- Diversity of choice;
- Adaptation in response to changing technology;
- Economic viability;
- A high standard of environmental sustainability, urban design and amenity;
- Climate change adaptation and mitigation;
- Prevention of land, water, air and noise pollution
- Protecting, conserving and improving biodiversity, waterways and other natural resources.
- Accessibility.
- Land use and transport integration.
- Waste minimisation and resource recovery.

Planning is to prevent environmental, human health and amenity problems created by siting incompatible land uses close together.

Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns and investment in transport, utility, social, community and commercial infrastructure and services.

44. **Clause 12 - Environmental and Landscape Values** which seeks to protect and conserve Victoria's biodiversity, protect and enhance marine and coastal areas, protect and conserve environmentally sensitive areas.
45. **Clause 13 – Environmental Risk and Amenity** which seeks to adapt to the impacts of climate change through risk-based planning.
46. **Clause 14 – Natural Resource Management** – which supports in the conservation and wise use of natural resources including energy, water, land, stone and minerals to support both environmental quality and sustainable development. That recognises that planning should promote development that is environmentally sustainable and minimise detrimental impacts on the built and natural environment.

47. **Clause 15 – Built and Environment and Heritage** – which recognises the role of urban design, building design, heritage and energy and resource efficiency in delivering liveable and sustainable cities, towns and neighbourhoods.

48. **Clause 15.01-2s – Building Design**, which seeks to achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development, this includes the strategy to:

Improve the energy performance of buildings through siting and design measures that encourage:

- Passive design responses that minimise the need for heating, cooling and lighting.
- On-site renewable energy generation and storage technology.
- Use of low embodied energy materials.

49. **Clause 15.01-2L – Energy and Resource Efficiency**, specifically in its strategies requires design development to:

- Promote sustainable design measures such as water efficient design and solar access using site layout, design and construction techniques.
- Allow for adaptive re-use in the future.
- Use landscape design to assist with passive solar heating and cooling.
- Make use of buildings and materials with minimal environmental impact, such as recycled materials and re-use of existing buildings.

50. Amendment C187 address this with the introduction of a local policy with requirements for, but not limited to, energy performance, integrated water management, indoor environment quality, waste management and urban ecology

51. **Clause 16 Housing** – requires that Planning should ensure the long term sustainability of new housing, to promote good housing and urban design to minimise negative environmental impacts and keep costs down for residents and the wider community.

52. Amendment C187 address Clause 16 of the Planning Scheme by ensuring that long term sustainability of housing is achieved using best practice in environmentally sustainable development from the design stage through to construction.
53. **Clause 18 – Transport** - which aims to ‘create a safe integrated and sustainable transport system that actively contributes to environmental sustainability’
54. **Clause 19 - Infrastructure** - which aims to ‘ facilitate the uptake of renewable energy technologies on a site by site and neighbourhood level.
55. **Clause 55 – Two or more dwelling on a lot and residential buildings** –includes some ESD principles and energy efficiency objectives
56. **Clause 58 – Apartment Developments** –includes energy efficiency aims

## **Amendment VC216**

57. Amendment VC216 makes changes to the Planning Policy Framework (PPF) in the Victoria Planning Provisions (VPP) and all planning schemes to support environmentally sustainable development (ESD).
58. The amendment implements Plan Melbourne 2017-2050 Action 80 ‘Review of planning and building systems to support environmentally sustainable development outcomes’.
59. The amendment also implements aspects of Action 89, 91, 94, 96, 97 and 101 relating to water management, cooling and greening, air and noise pollution, and recycling and resource recovery.
60. These changes to the PPF are part of stage one of the Environmentally sustainable development of buildings and subdivisions - A roadmap for Victoria’s planning system (Department of Environment, Land, Water and Planning, 2020).
61. VC216 has made changes and amendment to:
  - Clause 01 (Purposes of this planning scheme)
  - Clause 11 (Settlement), Clause 11.01-1S (Settlement), Clause 11.02-2S (Structure planning)
  - Clause 12 (Environmental and landscape values), Clause 12.01-1S (Protection of biodiversity)

- Clause 13.01-1S (Natural hazards and climate change, Clause 13.05-1S from (Noise abatement) to (Noise management), Clause 13.06-1S (Air quality management)
  - Clause 15 (Built environment and heritage), Clause 15.01-2S (Building design), Clause 15.01-3S (Subdivision design), removing Clause 15.02 (Sustainable development) and re-locating content to relevant Clauses; removing Clause 15.02-1S (Energy and resource efficiency) and re-locating content to relevant clauses;
  - Amending Clause 19 (Infrastructure), Clause 19.01-1S (Energy supply), Clause 19.01-2S (Renewable energy) Clause 19.03-3S (Integrated water management)
  - Clause 19.03-5S (Waste and resource recovery)
62. VC216 changes local planning schemes by making consequential changes to move all local policies under Clause 15.02-1S (Energy and resource efficiency) to Clause 15.01-2S (Building design) to align with the removal of clause 15.02 (Sustainable development).
63. The most applicable change to this Amendment is Clause 15.02-1S Building Design, this was modified to include ESD at the building scale in the objective, new and amended strategies, relating to energy performance, waste and recycling, water management, cooling and a new policy document.
64. This amendment to this Clause then put into effect the deletion of previous Clause 15.02 Sustainable Development as part of VC216.
65. VC216 was intended to consider Plan Melbourne 2016-2050, this is summarised in the Explanatory Report as follows:

*“Amendment VC216 supports improvements in the energy and water efficiency of new buildings and the performance of new subdivisions. This will contribute to more affordable living, help reduce greenhouse gas emissions and reduce stormwater discharges into our rivers and bays. The quality of life for Victorians is also enhanced by building design and subdivision features that make it easier to recycle, support more sustainable transport options and minimise the exposure of air pollution and noise. Introducing support for responses to climate change as an additional ‘Purpose’ OFFICIAL of planning schemes recognises the existential significance of this issue for all aspects of land use planning in Victoria.”*

66. These changes to the Scheme further underpin the strategic need to the amendment, including a new Purpose of the Planning Scheme at Clause 01; 'To support responses to climate change'.
67. Amendment VC216 was approved by the Minister for Planning on 10 June 2022, prior to the exhibition period of Amendment C187bays. The amendment reinforces the necessity for local ESD policies, because of the current lack of more comprehensive statewide ESD policies.
68. Amendment C187 includes an expiration of the proposed policy when it is superseded by an equivalent provision in the Victorian Planning Provisions.

## **Other Relevant Amendments**

### **Amendment C195 – Elevated Environmentally Sustainable Development**

69. Bayside has also been collaborating with the Council Alliance for a Sustainable Built Environment (CASBE), in partnerships with a group of 23 councils across Victoria, in Stage 2 of the Elevating Targets Planning Project for a Sustainable Built Environment.
70. Amendment C195bays seeks to amend the Scheme to introduce a new ESD planning control. The amendment introduces a new Particular Provision relating to Environmentally Sustainable Development (ESD) into the planning scheme. The Particular Provision contains ESD Objectives and Standards which implement measures that facilitate best practice ESD and support zero carbon development outcomes.

The ESD Objectives and Standards address:

- Operational Energy (energy efficiency, performance and greenhouse gas emission reduction)
- Embodied Carbon (greenhouse gas emission reduction and resource efficiency)
- Sustainable Transport (electric vehicles and bicycles)
- Integrated Water management (water efficiency and integration)
- Green infrastructure (lot scale vegetation and urban ecology)
- Climate resilience (climate change adaptation, urban heat mitigation)

## Planning Practice Notes

71. The following practice notes have been considered through the preparation of Amendment C187bays:

- PPN13: Incorporated and Background Documents;
- PPN46: Strategic Assessment Guidelines;

## CONSIDERATION OF SUBMISSIONS

### Issues raised in submissions

72. Council received a total of 2 submissions in response to the exhibition of the Amendment.

73. One submission was from the Council Alliance for a Sustainable Built Environment (CASBE) and was in support of the amendment, as follows:

*CASBE welcomes and strongly supports the proposed introduction of a Local Planning Policy into the Bayside Planning Scheme to provide policy guidance for Environmentally Sustainable Development (ESD).*

74. The second submission was received from the Housing Institute of Australia (HIA), who are not in support of the amendment.

75. The key matters raised in submissions relate to:

- HIA do not consider the role of a planning instrument to introduce new application requirements for construction design outcomes that are already regulated by the National Construction Code (NCC)
- HIA's view is building design and construction solutions, including addressing ESD construction standards should be managed through the current framework of the NCC
- A planning instrument must not be used to impose any higher construction standards to the NCC

- NCC 2022 currently under review, proposes higher star ratings for residential construction than the current requirements. The timing of Amendment C187 is therefore premature
- HIA do not support a construction standard mandate at the planning permit stage as a general response to addressing climate change
- Under the proposed new ResCode model, Clause 15.02-1L for 'Environmentally Sustainable Development' could not be considered for a fully compliant ResCode application
- Multiple and unnecessary layers of planning permit requirements are contributing to the time and cost blowouts currently burdening the residential sector
- HIA does not support planning policy that duplicates building matters and brings forward technical assessment costs to the planning stage

76. The Submissions received to Amendment C187bays are included at Appendix D

### **Consultation with Submitters**

77. Following the receipt of the HIA submission, and preceding the Ordinary Meeting of Council meeting, a meeting was held with Roger Cooper, Senior Planner Adviser for HIA on 14 September 2022.
78. The purpose of this meeting was to discuss the way forward, taking into consideration that the concerns raised by HIA had been addressed in previous Planning Panel and Advisory Committee processes.
79. Roger Cooper responded that the HIA still wanted the matter to continue to a Panel Hearing but concurred with Council that they would be amenable to requesting a Panel process 'on papers' at the Direction Hearing.

### **Response to HIA Submission**

80. Mornington Peninsula Shire recently underwent a Planning Panel process with Amendment C232morn which is equivalent to Amendment C187bays.
81. The HIA submitted a very similar submission to C232morn, with the key issues raised being identical to that of C187bays.

82. The Panel Report for Amendment C232morn has not been published.
83. Mornington Peninsula Shire’s response to the issues, raised by HIA which were submitted at Panel, are outlined below:

HIA Submission	Mornington Peninsula Shire Response
<p>9.1</p> <p>We consider it is not the role of a planning instrument to introduce new application requirements for construction design outcomes that are already regulated by the National Construction Code (NCC).”</p> <p>“HIA’s view is building design and construction solutions, including addressing ESD construction standards should be managed through the current framework of the NCC”</p>	<p>An Advisory Committee was appointed by the Minister for Planning in 2014 to consider the first group of six councils jointly amending their respective planning schemes to implement ESD local planning policy as is proposed by Amendment C232morn.</p> <p>Regarding whether ESD should be regulated by the planning or the building system, HIA submitted to this process in 2014 and the Committee “formed the view that a degree of overlap between the planning and building is to be expected given both are required by their respective legislation to consider issues of sustainability and energy efficiency. But despite concerns raised in some of the submissions, the Committee is not convinced this is a problem.”</p> <p>The Committee made a range of other findings, including that “there is a strong legislative and policy framework that supports the need for sustainable development, and which recognises that both planning and building have a significant role to play in achieving it.”</p> <p>And;</p> <p>“where planning consent is required for buildings and works, based on the objectives of the Planning and Environment Act 1987 and SPPF, it is reasonable to require an application to include an assessment that identifies the environmental targets and performance of a building”</p> <p>Based on the above, the planning system has a legitimate obligation to consider and regulate issues of sustainability and energy efficiency.</p>
<p>9.2</p> <p>“a planning instrument must not be used to impose any higher construction standards to the NCC, as could be the case through discretionary ESD decision</p>	<p>The submission does not reference legislation, case law or any other evidence to substantiate the claim that a planning instrument must not or can not impose a higher construction standard to the NCC.</p>

<p>making at the planning stage.”</p>	<p>The Committee considered this overlap in regulation by the planning and building systems as noted above at 9.1. The Committee’s Panel Report noted the NCC sets the minimum standard and the planning system through the Sustainable Design Assessment in the Planning Process (SDAPP) encourages applicants to prepare designs that exceed those NCC minimum standards. The Committee found that this was a complementary arrangement, rather than conflicting and was not of concern.</p>
<p>9.3 “We note NCC 2022 currently under review, proposes higher star ratings for residential construction than the current requirements. The timing of Amendment C232 is therefore premature before Australia’s leading legislation for residential construction of ESD (i.e. NCC 2022) is finalised”</p>	<p>The proposed ESD policy under the planning system and the NCC review under the building system are effectively working towards the same outcome which is to reduce the energy consumption of buildings.</p> <p>The proposed ESD policy seeks to achieve best practice environmentally sustainable development and the NCC establishes minimum standards for a building’s energy performance. Therefore, each system is applied at a different end of the spectrum of energy performance with best practice at one end and minimum standards at the other.</p> <p>Minimum standards for higher star ratings under the NCC will improve the energy performance of buildings, but minimum standards will not conflict with best practice design and therefore there is nothing to gain by delaying Amendment C232 until the NCC review is finalised.</p> <p>As above, previous review of the planning and building systems by the 2014 Advisory Committee finds no conflict or concern with the two systems both considering ESD requirements for residential development.</p>
<p>9.4 “HIA does not support a construction standard mandate at the planning permit stage as a direct response to addressing climate change”</p>	<p>The proposed ESD policy does not mandate a construction standard. Rather, it encourages best practice ESD outcomes applied on a discretionary and flexible basis.</p>
<p>9.5 “In December 2021 DELWP publicly exhibited the “improved operation of</p>	<p>The ‘improved operation of ResCode’ is a discussion paper introducing a new assessment model. The new assessment model proposes to replace the ResCode assessment requirements based</p>

<p>ResCode model. This new ResCode assessment model adopts a 'deemed to satisfy' solution for ResCode standards / objectives under a streamlined assessment. It included an exemption for fully ResCode compliant development from other such planning policy (including but not limited to) the "Planning Policy Framework".</p> <p>Therefore, under that proposed ResCode model, Clause 15.02-1L for 'Environmentally Sustainable Development' could not be considered for a fully compliant ResCode application."</p>	<p>on objectives, standards and decision guidelines with the new Performance Assessment Module (PAM). This new assessment model is not currently operational and there is no timeline for its introduction.</p>
<p>9.6</p> <p>"Multiple and unnecessary layers of planning permit requirements are contributing to the time and cost blowouts currently burdening the residential sector."</p>	<p>Data from Council's adopted Climate Emergency Plan (August 2020) shows that electricity and gas used in buildings represent the Peninsula's biggest source of carbon emissions (61%). The Plan also notes that 86% of people surveyed during development of the Plan identified 'energy transition' (from high to low emissions) as an important outcome that is necessary to address the climate emergency. This demonstrates that energy consumption in buildings is one of the Shire's most substantial mitigation opportunities and that acting on this opportunity is important to the Shire's community. Based on the above and in absence of other mechanisms with proven emission reduction efficacy, it is inappropriate to characterise this proposed ESD policy as an unnecessary requirement.</p> <p>Regarding financial impact, the submission does not present any evidence to substantiate claims that the proposed ESD policy will increase time or cost associated with construction. However, the potential for upfront costs of construction to be offset by savings in relation to energy was discussed at the 2014 Advisory Committee hearing.</p> <p>The Panel Report notes "In his expert witness statement for the</p>

	<p>Councils, Mr Harrington undertook a cost benefit analysis in relation to four development types: small residential (new), small residential (extension), large residential and non-residential. The cost-benefit model settings were for 2014-2050 and incorporated factors such as gas, electricity and water prices.” This cost-benefit analysis demonstrated a positive cost benefit ratio for all building types assessed and savings from reduced energy bills were enjoyed by the building occupants.</p> <p>Ultimately, housing affordability considerations need to go beyond construction cost alone and must also consider ongoing energy and living costs to the occupant.</p>
<p>9.7 “HIA does not support planning policy that duplicates building matters and brings forward technical assessment costs to the planning stage”</p>	<p>See response to 9.1 regarding duplication and overlap, and response to 9.6 regarding costs.</p>

84. Bayside City Council concurs with the response provided by Mornington Peninsular Shire Council to the issues raised by the HIA, which are identical to those that were received for Amendment C187bays.
85. There are now 22 Councils with a similar local ESD Policy to that which is being proposed by Amendment C187bays which have already been tested through various Planning Panel and Advisory Committee processes. Many of which received a submission from the HIA, with the HIA consistently holding its position. A full list of those that have been gazetted are listed below

<b>Planning Schemes with Local ESD Policies</b>	<b>Original Date of Gazettal</b>
Banyule Planning Scheme	19 November 2005
Moreland Planning Scheme	
Port Phillip Planning Scheme	
Stonnington Planning Scheme	
Whitehorse Planning Scheme	

Yarra Planning Scheme	
Monash Planning Scheme	29 September 2016
Darebin Planning Scheme	31 August 2017
Manningham Planning Scheme	
Knox Planning Scheme	14 December 2017
Brimbank Planning Scheme	18 October 2018
Greater Bendigo Planning Scheme	
Greater Dandenong Planning Scheme	
Hobsons Bay Planning Scheme	
Kingston Planning Scheme	
Whittlesea Planning Scheme *	
Wyndham Planning Scheme	
Greater Geelong Planning Scheme	17 October 2019
Moonee Valley Planning Scheme	19 June 2020
Hume Planning Scheme	11 November 2021
Hepburn Planning Scheme	10 February 2022
Marondah Planning Scheme	7 April 2022

86. The position held by HIA was originally advanced in the submission to the initial Advisory Committee and Panel report of 2013, (reporting on the propose ESD policies by the Cities of Banyule, Moreland, Port Phillip, Stonnington and Yarra), as well as the subsequent “ESD panels’

87. The Panel Hearing for Darebin and Manningham Planning Schemes Amendment GC42 (June 2016) is an example of one of these Panels. The Panel Report in response to the HIA position stated:

*Whilst the HIA made it clear its objection relates to the principle of the Amendment, the issues it raised at this Hearing were comprehensively considered by the EEDAC and introduce nothing that justifies diverting from the findings of the EEDAC report.*

*The submissions also raised by Boroondara City Council were considered by EEDAC.*

*This Panel does not intend to repeat the EEDAC findings in detail, rather referring the reader to that report, but it will address some of the key finding, which included:*

*There is a strong legislative and policy framework that supports the need for sustainable development and which recognises that both planning and building have a significant role to play in achieving it.*

- There is a role and a statutory obligation for planning to advance sustainability.*
- Whilst the existing State Planning Policy Framework and Victoria Planning Provisions provide a good starting point for the inclusion of sustainability, there are clear areas for improvement.*
- The role of planning in achieving sustainability is limited by the fact that it can only influence development that requires a planning permit.*
- A Statewide approach to sustainability in planning would be the most effective way to achieve the greatest sustainability outcomes; however, there is still a potential role for local policies to play in achieving greater local sustainability outcomes.*
- Any local approach should include a sunset clause that would enable the review of these policies upon the introduction of any Statewide approach.*
- The fact that the building regulatory system is generally not involved at the initial design stage of a development, when the orientation and internal layout of buildings is determined, can result in a less desirable design outcome, even though the minimum thermal; energy rating is met.*
- The involvement of planning at the initial site planning stage enables the orientation, internal layouts and sites development to be dealt with in a manner that may assist at the building approval stage in achieving the best design outcome in achieving the minimum or even a higher thermal energy rating of the building.*
- The approach to sustainability in planning schemes be further reviewed to provide a more coherent, strengthened approach to implementation. This should be based on a Statewide approach*

*and include stronger, higher guidance in the State Planning Policy Framework and Clause 65, as a minimum, with consideration of a range of options.*

*The Panel supports the position adopted by EEDAC and re-emphasises that until such time as a consistent Statewide approach is adopted, it is appropriate for policies such as these to be included in local planning policies.*

*It is noted the Minister for Planning supported the findings of the EEDAC and subsequently approved the six Amendments; thus creating a clear precedence for the merit of including ESD policies into the planning schemes.*

*Nothing in the HIA submission has persuaded the Panel that it should adopt a different approach to this Amendment.*

## **Local Policy Provision's in relation to NCC requirements**

88. The National Construction Code (NCC) establishes minimum standards for a building's energy performance, whereas the proposed Policy seeks to achieve best practice ESD. Both have a different intent. Best practice ESD outcomes are encouraged on a discretionary and flexible basis, the Policy will not impose requirements.
89. The Panel Report for Darebin and Manningham Planning Schemes Amendment GC42 (June 2016) also takes this into consideration;

### *"Discussion*

The issues raised by the HIA were comprehensively considered by the EEDAC and the HIA has not introduced any new information or evidence that has persuaded this Panel to divert from the findings of the EEDAC report.

This Panel does not intend to repeat the EEDAC findings in detail, but rather refer the reader to Chapters 5, 6 and 7 of that report, but it will address some of the key finding, which included:<sup>1</sup>

- *All built form can incorporate elements of sustainability but there are divergent opinions as to when and how this is to be achieved and to what extent.*
- *The fact that the building regulatory system is generally not involved at the initial design stage of a development, when the orientation and internal layout of buildings is determined, can result in a less desirable design outcome, even though the minimum thermal energy rating is met.*
- *The involvement of planning at the initial site planning stage enables the orientation, internal layouts and site development to be dealt with in a manner that may assist at the building approval stage in achieving the best design outcome in achieving the minimum or even higher thermal energy rating of the building.*
- *There is a clear need for an integrated planning and building approach to achieve sustainable outcomes.*

The Panel supports the findings of the EEDAC report.

#### *Conclusions*

The Panel concludes the proposed policies will not contravene the NCC, but rather build upon them.”

### **Changes in Response to Submissions**

90. Council is not seeking any changes in response to the submission received.

### **Final Amendment Position**

91. Council’s final position on the Amendment is to seek the Panel’s support to progress the Amendment C187bays as exhibited.

This concludes Council’s Submission.

Date 25 November 2022