



# Submission to Inquiry into VPP Amendments VC257, VC267 & VC274

## Introduction

Mornington Peninsula Shire (the Shire) welcomes the opportunity to provide a submission to the Select Committee's (SC) Inquiry about Victoria Planning Provisions (VPP) Amendments VC257, VC267 and VC274 (the Inquiry).

We understand the SC's Terms of Reference (ToR) are to inquire into, consider, and report about whether these amendments give proper effect to the objectives of planning in Victoria, and the objectives of the planning framework, as set out in section 4 of the *Planning and Environment Act 1987* (P&E Act). Specifically, the SC is interested in views on:

1. *Whether the VPP amendments appropriately balance the objectives of planning in Victoria.*
2. *Whether the VPP amendments are likely to create any significant unintended outcomes.*
3. *Whether consultation on the VPP amendments was adequate.*
4. *Whether the exemptions provided for in Clause 55 of the VPP, as amended by VC267, are appropriate.*
5. *What specific changes would you seek to the amendments?*
6. *Whether the VPP that existed prior to these amendments, these amendments, or alternative proposals are appropriate to meet the housing needs of the state and local communities?*

This submission has been prepared by Shire officers, noting that it responds to VC267 as the most relevant planning reform impacting the Shire for reasons outlined below, is brief in nature and has not been formally adopted by Mornington Peninsula Shire Council (Council) given the tight time constraints associated with the Inquiry.

## Background

### Planning and Environment Act

The objectives of the P&E Act at section 4(1) are:

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

The objectives of the planning framework established by the P&E Act at section 4(2) are:

- (a) *to ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels;*
- (b) *to establish a system of planning schemes based on municipal districts to be the principal way of setting out objectives, policies and controls for the use, development and protection of land;*



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- (c) to enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;*
- (d) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;*
- (da) to provide for explicit consideration of the policies and obligations of the State relating to climate change, including but not limited to greenhouse gas emissions reduction targets and the need to increase resilience to climate change, when decisions are made about the use and development of land;*
- (e) to facilitate development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes;*
- (f) to provide for a single authority to issue permits for land use or development and related matters, and to co-ordinate the issue of permits with related approvals;*
- (g) to encourage the achievement of planning objectives through positive actions by responsible authorities and planning authorities;*
- (h) to establish a clear procedure for amending planning schemes, with appropriate public participation in decision making;*
- (i) to ensure that those affected by proposals for the use, development or protection of land or changes in planning policy or requirements receive appropriate notice;*
- (j) to provide an accessible process for just and timely review of decisions without unnecessary formality;*
- (k) to provide for effective enforcement procedures to achieve compliance with planning schemes, permits and agreements;*
- (l) to provide for compensation when land is set aside for public purposes and in other circumstances.*

## VPP Amendments

The VPP Amendments subject to the Inquiry are summarised as follows:

- Amendment [VC257](#) introduced the Housing Choice and Transport Zone (HCTZ) and the Built Form Overlay (BFO) to support housing growth around activity centres. (Gazetted on 25 February 2025).
- Amendment [VC274](#) introduced the new Precinct Zone (PRZ) to guide and facilitate land use and development within priority precincts across Victoria. (Gazetted on 28 February 2025).
- Amendment [VC267](#) introduced the new 'Townhouse and Low-Rise Code' to provide which is a 'deemed to comply' assessment pathway designed to support faster decisions and greater certainty for townhouses and apartment buildings up to three storeys at Clause 55 (Two or more dwellings on a lot). (Gazetted on 6 March 2025).

This submission focuses on **Amendment [VC267](#)** as the most relevant reform impacting the Shire because:

- The Shire does not contain any of the 60 activity centres (otherwise referred to as 'train or tram zones') forming part of the State Government's Activity Centres Program for which VC257 controls are intended.
- Similarly, the Shire does not contain any 'priority precincts' for which VC274 controls are intended.
- VC267, however, affects Clause 55 which applies to all residentially zoned land across the Shire, including the General Residential Zone (GRZ), Neighbourhood Residential Zone (NRZ) and Mixed Use Zone (MRZ).

The extent of residentially zoned land on the Mornington Peninsula is shown in Figure 1.



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Figure 1: Extent of residentially zoned land within the Shire affected by VC267\*



\*Excludes residential land zoned Low Density Residential Zone (LDRZ) as Clause 55 does not apply to this zone.

## Amendment VC267 – ‘Townhouse & Low-Rise Code’

We understand that Amendment VC267 implements new residential development planning assessment provisions to boost housing construction to meet the housing needs of Victorians. The new provisions are designed to:

- Facilitate quicker and more efficient decision making
- Provide greater transparency and certainty for applicants, decision makers and the community about what is acceptable development and how it is assessed
- Ensure residential development is sustainable and provides reasonable standards of amenity for existing and new residents.

In short, we understand that VC267 overhauls Clauses 55 (two or more dwellings) and 57 (two or more dwellings of four storeys) in all Victorian Planning Schemes, with consequential changes to Zones, Overlays and other Particular Provisions. Key changes include:

- Introducing a new suite of ‘deemed to comply’ standards.

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- Removing consideration of other matters where compliance with Clause 55 is achieved (noting that Overlay and Particular Provisions will continue to apply separately).
- Removing third-party review rights (but not notice requirements) when all applicable standards are met.
- Removing the ability to specify local variations to some Clause 55 standards.
- Removing the ability to make other Clause 55 standards more restrictive.

## Housing on the Mornington Peninsula – Amendment C219morn

By way of additional context to this submission, officers note that Council recently submitted [Amendment C219morn](#) to the Minister for Planning for approval on 19 September 2024. The amendment implements Council's adopted [Housing & Settlement Strategy](#) and [Neighbourhood Character Study](#), providing a sustainable approach to housing on the Mornington Peninsula by:

- Directing future growth to areas close to shops, jobs, schools and public transport.
- Ensuring all types of housing can be accommodated (homes, units, apartments and residential aged care facilities).
- Protecting the Peninsula's special values and character.

In summary, Amendment C219morn:

- Rezones most residential land outside the Mornington, Hastings and Rosebud Major Activity Centres from GRZ to NRZ.
- Introduces a new Residential Development Framework, identifying 'substantial', 'incremental' and 'minimal' housing change areas.
- Translates Council's adopted Neighbourhood Character Study and existing character controls in various Design and Development Overlays (DDO) into modified Clause 54/55 standards in NRZ/GRZ schedules (with standards generally more "restrictive" than the generic State-based standards).
- Deletes several existing DDO requirements and permit triggers to reduce 'red tape' for single dwelling development.
- Applies new DDOs for LDRZ land where Clause 54/55 don't apply.
- Applies the Neighbourhood Character Overlay (NCO) to areas of highly intact special character in the Ranelagh Estate, Mt Martha, and The Avenues, Rosebud, Tootgarook & Rye.
- Applies the Vegetation Protection Overlay (VPO) to parts of Dromana, McCrae, Mount Martha, Flinders where there are presently no vegetation controls.

Adopted by Council on 6 August 2024, Amendment C219morn has taken 7 years to complete (to date), is based on extensive community consultation (both through the preparation of the underpinning strategies and planning scheme amendment exhibition and Panel process) and represents one of the largest local reforms to the Mornington Peninsula Planning Scheme in the past 20 years.

## Does VC267 appropriately balance the objectives of planning in Victoria?

No, the amendment does not appropriately balance the objectives of planning in Victoria as outlined in the responses in the rest of the submission.

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## Is VC267 likely to create any significant unintended outcomes?

While officers generally support the *intent* of VC267 to fast-track housing delivery and provide greater clarity and certainty about development outcomes, we hold serious concerns about the nature of the changes and associated consequences – some of which we accept may be unintended. Our concerns primarily relate to the following matters which are discussed in further detail below:

- Inappropriately reduced community influence over local planning and development outcomes.
- Inability to consider known environmental risks in planning decisions.
- Loss of local neighbourhood character controls which will not necessarily deliver more housing.
- Other administrative issues that will hamper the ability to deliver better planning decisions faster.

### **Inappropriately reduced community influence over local planning and development outcomes**

Amendment VC267 has dramatically reduced the scope for communities to influence local planning and development outcomes both through substantially reduced review rights in the planning permit application process and the inability of councils to implement adopted local housing and neighbourhood character studies (which have undergone community consultation during preparation and also via subsequent planning scheme amendment processes) into locally varied zone schedules.

We therefore submit that VC267 fails to deliver on the objectives of the planning framework established by the P&E Act at section 4(2)(a)(g) and (i).

### **Inability to consider known environmental risks**

Prior to VC267, Council could rely on State and Local Planning policy and in particular the decision guidelines in the Planning Policy Framework (PPF), Clause 65 and Section 60 (1) (b), (e), (f), (1A) and (1B) of the P&E Act to consider known environmental risks in the assessment and approval of housing applications. This is no longer the case for applications for 2 or more dwellings on a lot as Clause 55 now explicitly states that these matters cannot be considered (we assume the same will be applied in the pending 'codification' of Clause 54: One dwelling on a lot). The inability of councils to consider known risks could have significant implications for the safety of land use and development outcomes.

For example, the State Government's [Port Phillip Bay Coastal Hazard Assessment](#) identifies areas all along Port Phillip Bay that will be subject to coastal inundation and erosion. This data has not been translated into planning scheme amendments, however, at the Shire, planners have been requiring a Coastal Hazard Vulnerability and Risk Assessment as part of planning permit applications where the property is identified as being exposed to coastal hazard risks (further information on this process is available at [Development response to coastal hazards - Mornington Peninsula Shire](#)). This process ensured new development appropriately responded to known risks based on the best available data. This process can no longer be applied due to the changes brought about by VC267.

Similarly, the Shire has mapping of areas that are at high risk or landslip. Again, this is not in the planning scheme, but planners have been asking for geotechnical assessments as part of planning permit applications to ensure risk is appropriately mitigated. A similar approach applies for areas that may be impacted by landfill gas, high-pressure pipelines, Coastal Acid Sulphate Soils and potentially contaminated land (e.g. known contaminating uses such as service stations or former landfill sites with no EAO).

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Officers recognise that, from a purist planning perspective, the State Government's response would be that all known hazards should be in the Planning Scheme, through the relevant Overlay. This, however, isn't the reality. Local councils simply do not have the resources (either people or monetary) to be able to undertake the relevant data collection and planning scheme amendments in a timely manner. Even if they did, the time it takes from receiving the data to it being implemented into the planning scheme is significant. A recent example is [Amendment C271morn](#) which sought to implement erosion and flooding overlay controls into our planning scheme based on the State Government's own Western Port Local Coastal Hazard Assessment (Water Technology, 2014). The amendment was gazetted on 9 January 2025, over 10 years since the data was first available.

We submit that the inability to consider known environmental risks under VC267 directly contravenes the objectives of planning in Victoria as at section 4 (1)(a)(b)(c)(f) and (g), as well as the planning framework at (2)(c)(d) and (da).

If a control must be in place for the risk to be considered in a permit application, we submit that the State Government should intervene as a matter of urgency (as they did with implementation of the former Wildfire Management Overlay and current Bushfire Management Overlay controls in the wake of the Black Saturday bushfires) to help councils fast-track inclusion of known environmental hazards into local planning schemes.

Another option would be for the State Government to amend the parent control of residential zones to include consideration of known environmental risks to circumvent the exemptions introduced by VC267.

## **“Neighbourhood character vs housing capacity”**

VC267 unnecessarily pits neighbourhood character against housing capacity.

The new code is fundamentally geared towards delivering more urbanised, “inner suburban” outcomes that may not respect the preferred character in line with community expectations – particularly in peri-regional, regional and outer areas of Melbourne. For instance, under the new code, front setbacks have been reduced from 9m to 6m, and private open space has been reduced from 40 to 25m<sup>2</sup>.

We submit that local variation can still be accommodated within the Victorian planning system without impacting housing supply, certainty, transparency or efficiency in decision-making.

Mornington Peninsula Shire's Planning Scheme Amendment C219morn delivers both housing capacity and preferred character outcomes. That is, the amendment provides for sufficient housing capacity to meet the State Government's housing targets set down by the new Plan for Victoria while enabling locally responsive character controls. This was extensively tested through the Panel Process and detailed urban capacity analysis undertaken as part of the amendment.

Large parts of Planning Scheme Amendment C219morn are now not able to be implemented since VC267 was introduced as now only minimum street setback, site coverage, private open space and front fence height can be locally varied and only if the local variations are less restrictive than the standard in clause 55 (apart from front fence height which can be more restrictive). No local variations are permitted to permeability, landscaping, side and rear setbacks or walls on boundaries.

## **Environmentally sustainable development (ESD)**

Like many other Local Councils, Mornington Peninsula Shire has a specific local ESD planning policy (Clause 15.01-2L-02), and is currently, along with 24 other Councils, seeking joint planning scheme amendments to further improve ESD planning provisions. The ESD standards that are in place in the local policy are generally higher than those required by the new Code at clause 55.



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Officers support the state-wide application of ESD standards through Clause 55, however submit that these standards should be at least equivalent to existing local ESD policies.

## Other administrative issues

Officers submit that there is difficulty in determining whether a development meets certain new codified standards introduced by VC267 due to their inherent complexity and the removal of discretion. Before VC267, standards were discretionary and therefore did not require a strict 'pass or fail' approach now required under codification. If a standard is not sufficiently clear, then it will likely result in the unintended and adverse impact of slowing down and/or frustrating the development approvals process with consequential review proceedings – not on matters of merit, but rather procedural correctness.

For example, the new Tree Canopy Standard B2-7 which requires the measurement of canopy diameter which, based on the strict nature of the codified standards, must now be measured precisely. This is both impractical and unrealistic. It is similarly difficult to determine compliance with some of the new standards based on principles of Environmentally Sustainable Development (ESD). However welcome in principle, the new standards are difficult to assess in a codified context – such as Standard B3-10: Natural Ventilation which requires the precise measurement of maximum and minimum 'breeze paths' through dwellings and 'ventilation openings with approximately the same size'. Despite purporting to be a simpler and more efficient assessment approach, the State Government's [Townhouse and Low-Rise Code Guidelines](#) recommend that the National Construction Code – a code which is not only outside the planning scheme but part of the *building* system – should be referred to for guidance in applying the standard. Officers submit that this approach is unnecessarily complex and laborious and question the value of including codified standards in the planning system that are perhaps better addressed via the building system.

Given the above complexities, officers submit that councils will now need to request even more detailed information to support applications to ensure a clear decision can be reached about compliance with a codified standard. Otherwise, risks include the inappropriate loss of local resident review rights or protracted legal proceedings if a standard is misinterpreted as met (or not met). The exercise of planning will therefore be redirected from a performance-based merits assessment to a technical and procedural exercise fraught with legal and political risk. Officers submit that VC267 is therefore at odds with the objectives of the planning framework established by the P&E Act at section 4(2)(a) and (g).

Finally, officers note that VicSmart was introduced by the State Government in 2018 and the Government has not undertaken any reviews as to the ongoing success of this reform, or its impact on efficiencies to processing permits and delivering better decisions. Officers submit that it would be sensible for the State Government to review VicSmart – in consultation with Local Government – before further codifying residential development standards within the VPPs.

## Was consultation on VC267 adequate?

No. Officers are concerned that the State Government has expedited an important reform program with no meaningful engagement with local government, the level of government that largely administers the planning scheme. Local government, and in particular, local government planners, are intimately familiar with the problems and opportunities for improvements in the Victorian Planning Provisions and yet there was no meaningful engagement as part of these reforms.

The proposed deemed to comply standards that have ultimately morphed into VC267 were provided to Local Council's on 27 August 2024, with feedback due by the 11 September 2024. While an extension until 20 September was granted, 3 weeks is clearly inadequate – noting that it overlapped with the commencement

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of the election caretaker period. The final form of the amendment was not known until it was gazetted on 6 March 2025, with no opportunity to critique it before it came into effect.

As is the case for many other Victorian councils, the Shire's Amendment C219morn was prepared and drafted in good faith, following criteria set out in the State Government's Planning Practice Notes [PPN90: Planning for Housing](#) and [PPN91: Using the Residential Zones](#) and associated drafting rules. This included translating existing character requirements currently contained in DDOs (or local policy) into zone schedules wherever possible. This process required significant time, resourcing and effort to develop a strategically justified amendment which was ultimately supported by an independent Planning Panel appointed by the Minister for Planning. Through no fault of Council, major elements of Amendment C219morn are no longer permissible under VC267, and Council was not given any prior notice about the nature or implications of VC267 while Amendment C219morn was underway.

We further note that the type of codification delivered by Amendment VC267 is vastly different to what was tested with Local Government representatives through workshops held in 2024 – which Shire officers attended. With no prior notice about the nature or timing of Amendment VC267, councils such as the Shire were not afforded the opportunity to provide further input into the reforms or consider how the reforms may impact existing planning controls or strategic planning work currently underway.

We submit that the above impacts of VC267 fundamentally undermine the objectives of the planning framework established by the P&E Act as at section 4(2)(a)(g) and (i).

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

No, for the reasons outlined above.

## **What specific changes would you seek to VC267?**

Reintroduce the ability for more restrictive local variations to minimum street setback, site coverage, private open space, permeability, landscaping, side and rear setbacks and walls on boundaries.

Any local variations to schedules to the zone (where these local variations can be made) have to go through a planning scheme amendment that is authorised and finally adopted by the Minister for Planning. This enables the State Government to retain control over what local variations are introduced and to ensure that they do not impact housing capacity.

Change the exemptions so that known environmental risks (that are not yet in the planning scheme), can be considered (ie. remove the exemptions in clause 55 in relation to the decision guidelines in Clause 55 and the requirements of Sections 60 and 84B of the *Planning & Environment Act 1987*).

Remove the exemption in clause 55 in relation to Section 84B of the *Planning & Environment Act 1987*.

Raise the ESD related standards to at least those standards set out in the Local Planning Policies of the 27 municipalities that have them.

Reconsider the standards from a practical perspective (ie Tree Canopy B2-7) to ensure that they can be simply and efficiently implemented.

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## **Was the VPP that existed prior to these amendments, these amendments, or alternative proposals appropriate to meet the housing needs of the state and local communities?**

Officers support reforms to the Victorian Planning system that improve planning outcomes, streamline decision making and provide greater transparency and certainty for local government, permit applicants and the broader community.

The previous Clause 55 (prior to VC267) was overdue for renewal. However, the changes that VC267 has introduced do not appropriately balance the objectives of planning in Victoria.

Delivering more housing does not have to come at the expense of the liveability of our current and future communities.

Our view is that the government needs to repeal VC267 and work in partnership with local government and the development industry to find the balance between codification and performance-based decision making in the planning system. At the very least, then need to make specific changes to clause 55 to address the issues raised in this submission and others (particularly the MAV's).