



28 January 2022

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PO BOX 70
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The Secretary
Legislative Council Environment and Planning Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Dear Secretary,

Re: Inquiry into the protections within the Victorian Planning Framework

Brimbank City Council (Council) welcomes the opportunity to provide a submission to the Inquiry into the Protections within the Victorian Planning Framework.

Council's submission responds to the Terms of Reference established by the Legislative Council, where relevant to Brimbank.

Given the timeline for engagement was held over the Christmas/New Year period, and that Council's meeting cycle doesn't recommence until February, the Council officer submission has not been endorsed by Council.

Council officers will be reporting the submission to the Council Meeting on 15 February 2022, seeking endorsement, and will provide further correspondence to the Committee confirming the Council Meeting outcome.

Should you require further clarification on any matters raised by the submission, please contact [REDACTED] (Strategic Planning Coordinator) [REDACTED]
[REDACTED]

Yours sincerely,

[REDACTED]
Leanne Deans
City Strategy Manager



Brimbank City Council

Submission to Inquiry into the Protections within the Victorian Planning Framework

Introduction

Brimbank City Council (Council) welcomes the opportunity to provide its submission to the Inquiry into the Protections within the Victorian Planning Framework, and specifically the adequacy of the *Planning and Environment Act 1987* and the Victorian planning framework in relation to planning and heritage protection.

However, Council officers wish to highlight to the Legislative Council's Environmental and Planning Committee (Committee) that developing submissions are resource intensive, subject to tight deadlines and Council reporting timelines. Given the timeframes for submissions to this inquiry, with a due date of submissions being the 31 January 2022, Council officers have not had the opportunity to report to Council and have the submission endorsed. This will be done retrospectively at the Council Meeting on 15 February 2022.

Council has recently prepared a range of submissions on a number of proposed State government reforms and inquiries that are relevant to the Terms of Reference (TOR), including:

- 10 Year Social and Affordable Housing Strategy Discussion Paper
- Parliamentary Inquiry into Homelessness in Victoria
- Planning for Melbourne's Green Wedges and Agricultural Land
- Improving the Operation of ResCode
- Western Metro Land Use Framework Plan
- Planning and Building Approvals Process Review
- ESD Roadmap for Victoria's Planning System
- Draft Greening and Cooling provisions
- Legislative Council Environment and Planning Committee's Inquiry into Ecosystem Decline in Victoria.

It is not clear if the Committee is aware of, or has had regard to these submissions or proposed State-led reforms to the Victorian Planning Framework when developing the TOR. A link to each of the above Council submissions is provided at the end of this document.

This Submission has been informed by Council's response to these State government reforms, and the relevant professional experience and knowledge of Council officers from the Strategic Planning, Environment, Community Strengthening and Social Planning, and City Planning (statutory planning) Planning Units/Departments.

Summary of Key Issues

A response to the TOR have been provided, where relevant to Brimbank, in the table below. The following key points are highlighted:

- The opportunity to provide feedback to the Committee is welcomed, however Council has prepared a substantial number of submissions on planning and other related reforms, during 2020 and 2021. These submissions were resource intensive, subject to tight deadlines and Council reporting timelines, and it is not clear if the Committee is aware of, or has had regard to these submissions when developing the TOR.
- It is not clear how the Committee has informed itself on the proposed State government planning reforms and how the findings from this inquiry will integrate with State-led planning reforms that are currently being developed and/or implemented.
- Access to appropriate affordable housing, including social housing, for rent and purchase is a key challenge for Brimbank. The Committee were encouraged to seek an update on the recommendations from the Ministerial Advisory Committee into Planning Mechanisms for Affordable Housing (2019); to consider how State and Federal government can increase the supply of and funding for social and affordable housing across Victoria; and that State government consider providing increased support for local councils to prepare and implement affordable housing strategies.
- The cumulative impact of native vegetation removal on sites of less than 0.4 hectares can result in significant losses to landscapes and ecosystems and can lead to local species extinction. The Committee was encouraged to review the permit exemptions in the table to clause 52.17 (Native vegetation) of planning schemes.
- Greater emphasis should be placed on avoiding the loss of native vegetation when preparing Native Vegetation Precinct Plans under clause 52.17, as reliance on offsetting the removal of native vegetation does not adequately provide for ecosystem protections.
- Exemptions from planning scheme requirements, including an exemption from third party appeal rights, afforded by the introduction of clauses 52.20 (Victoria's Big Housing Build), 52.30 (State projects), 52.31 (Local government projects) and 53.20 (Housing by or on behalf of the Director of Housing) has resulted in limited opportunities for community input into significant projects. A consistent, best-practice community engagement strategy should be developed at the State government level to ensure that community members are provided with the opportunity to understand and input into development that will impact them.
- State government funding is needed to support heritage protections, particularly for owners of heritage properties, and resourcing for council heritage advisors and heritage studies.
- Long-term strategic planning for housing and neighbourhood character in Brimbank has been severely impacted by ongoing State-led planning reforms. The Committee should inform itself on the program of planning policy reforms currently in development by the State government, to ensure that any recommendations from this inquiry are strategic, integrated and do not result in wasted resources or further uncertainty for councils or communities.

Submission

Inquiry Focus – detailed in the Terms of Reference	Officer response - Key Issues	Recommendation
<p>(1) The high cost of housing, including but not limited to –</p> <ul style="list-style-type: none"> (a) provision of social housing (b) access for first home buyers (c) the cost of rental accommodation (d) population policy, state and local (e) factors encouraging housing as an investment vehicle (f) mandatory affordable housing in new housing developments. 	<p>Housing affordability is a key issue for Brimbank. While Council acknowledges that it has a role through the planning system to facilitate the supply of affordable housing, this is realistically limited by the voluntary nature of the affordable housing negotiations as provided for by the <i>Planning and Environment Act 1987</i>, the limited resources that council has to support the delivery of affordable housing outcomes, and its core obligations to the Brimbank community (i.e. community services, infrastructure).</p> <p>It is not the function of Planning Schemes to increase access for first home buyers, reduce the cost of rental accommodation or influence housing as an investment vehicle. While it is acknowledged that planning policy may influence these matters and the high cost of housing, the Victorian Planning Framework have a limited role in implementing tangible outcomes. The Federal and State governments are primarily responsible for the provision of social and affordable housing and policy interventions in the housing market.</p> <p>In this context, Council continues to advocate for the affordable housing needs of the Brimbank community, negotiate with permit applicants to achieve affordable housing outcomes and plan for a supply of appropriately zoned residential land.</p> <p>The Committee is encouraged to review Council’s submission to <i>Homes Victoria’s 10 Year Strategy for Social and Affordable Housing</i>, to the <i>Parliamentary Inquiry into Homelessness in Victoria 2019</i>, and familiarise itself with the advocacy of the Municipal Association of Victoria (MAV) on behalf of Victorian councils in relation to affordable housing. Council is currently in the process of preparing a response to the MAV’s <i>Victorian Local Government Strategic Statement on Social and Affordable Housing</i>. Council also provided feedback on the <i>Ministerial Advisory Committee into Planning Mechanisms for Affordable Housing</i> as detailed below.</p>	<ol style="list-style-type: none"> 1. Increased funding from State and Federal governments to support the delivery of social and affordable housing. 2. Enquire into the outcomes of the Ministerial Advisory Committee on Planning Mechanisms for Affordable Housing (2019). 3. Introduce consistent, state-wide planning controls for the provision of social and affordable housing. 4. Extend timeframes (to at least four to six weeks) for councils to provide a position on applications under the Big Housing Build, in order to strike a balance between the need to streamline the planning process and allowing for input from councils. 5. Ensure councils are provided with additional guidance, resources and support to review future social and affordable housing proposals, particularly in municipalities identified as priority local government areas in association with the Big Housing Build. 6. Incorporate mechanisms into the proposed Social and Affordable Housing Compact between Homes Victoria and local government that

	<p><i>Ministerial Advisory Committee into Planning Mechanisms for Affordable Housing.</i></p> <ul style="list-style-type: none"> • The MAC was appointed by the Minister for Planning in 2019 and Council feedback was provided via a MAV submission. The MAC delivered its advice to the Minister for Planning in December 2019. • It is understood that the MAC proposed a reconsideration of the current voluntary framework for affordable housing and a move towards a more consistent and uniform approach to support affordable housing development. It is important to note that recent work on social and affordable housing that has been commissioned by Council, particularly in relation to planning mechanisms, has highlighted the difficulty in developing local affordable housing policy when the recommendations from the MAC are yet to be released. Council would encourage the Committee to enquire into the status of these recommendations. • The Committee is also encouraged to review the MAV submission to the MAC, noting in particular that Council supports the view that funding for affordable housing should be sourced from a State and/or Federal government level. <p><i>Affordable housing and the Brimbank Planning Scheme</i></p> <p>Housing affordability and affordable housing are recognised in Planning Schemes at Clause 16 (Housing), including by:</p> <ul style="list-style-type: none"> ○ stating that planning for housing should include the provision of land for affordable housing (Cl. 16 Housing) ○ outlining strategies to improve housing affordability and increase the supply of well-located affordable housing (Cl 16.01-2S Housing Affordability) <p>A strategy to 'encourage the provision of affordable housing in new larger scale residential developments' is also included in the Local Planning Provisions at Clause 21.07-2 (Housing Diversity). Research commissioned by Council in 2021 concluded that the current affordable housing planning controls in the Brimbank Planning Scheme are comparable to similar Victorian municipalities.</p>	<p>ensure councils and communities are able to provide input into future planning and decisions relating to social and affordable housing.</p> <p>7. Explore alternative, and more certain, options to encourage supply of social and affordable housing through the planning system. In particular, the application of consistent, State-wide planning controls for the provision of social and affordable housing.</p> <p>8. The Victorian Government work with local government to test and model any proposed changes to affordable housing policy; allocate sufficient resources to support implementation and enforcement; and consider further reviews of planning controls to establish clearer decision making and assessment criteria.</p>
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	<p>Despite this broad policy support, there are a range of barriers to the provision of social and affordable housing through the planning system:</p> <ul style="list-style-type: none"> ○ Planning scheme amendments take time and resources. ○ There are different and inconsistent approaches between municipalities. ○ There is a lack of a clear policy position at the State level and within some municipalities. ○ There is generally limited understanding of 'land economics', which can make delivery of affordable housing unfeasible for some projects. ○ There are a range of specific site complexities such as contaminated land. ○ Decisions can be appealed at VCAT and overturned in the absence of clearly articulated local justification and policy basis. <p>These barriers highlight the importance of consistent, State-wide planning controls for the provision of social and affordable housing.</p> <p><i>Provision of social housing</i></p> <ul style="list-style-type: none"> • In November 2020, the Victorian Government announced the Big Housing Build, a \$5.3 billion investment in social and affordable housing. • Under the program, more than 12,000 social and affordable housing dwellings are expected to be built across Victoria over four years. • Brimbank is identified as a priority local government within the program, and three local projects have been supported through the first round of funding. • To support implementation of the Big Housing Build, the Victorian Government introduced amendments to the Victorian Planning Provisions (VPPs) at Clauses 52.20 (Victoria's Big Housing Build) and 53.20 (Housing by or on behalf of the Director of Housing). • According to the Victorian Government, the intention of these changes was to streamline the planning process and support economic recovery through the creation of jobs and the rapid delivery of much-needed social and affordable housing. • Key changes include the following: <ul style="list-style-type: none"> ○ Applications under Clause 52.20 (which must be partly or wholly funded through the Big Housing Build) are not subject to a permit process. Rather, relevant plans 	
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	<p>and reports must be approved to the satisfaction of the Responsible Authority (i.e. the Minister for Energy, Environment and Climate Change). While applications don't need to be assessed under some provisions of the planning scheme, proponents are required to undertake public consultation and engage with the relevant municipal council.</p> <ul style="list-style-type: none"> ○ Applications under Clause 53.20 are subject to a planning permit process, but third party notice and appeal rights have been removed in most cases. The Minister for Energy, Environment and Climate Change is the responsible authority for apartment buildings and larger developments of 10 or more dwellings. • Implementation of the Big Housing Build is still in its early stages, but there is a perception that the program is being delivered with limited community consultation and engagement with local government. • Current timelines are relatively short (three weeks) which make it particularly difficult for proposals to be formally presented to Council. • Councils are likely to need additional guidance, resources and support to review future proposals, particularly in municipalities identified as priority local government areas.¹ • The proposed Social and Affordable Housing Compact (a partnership of collaboration between Homes Victoria and Councils) should incorporate mechanisms to ensure councils and communities are able to provide meaningful input into future planning decisions relating to social and affordable housing. <p><i>Mandatory affordable housing in new housing developments</i></p> <ul style="list-style-type: none"> • In 2018, the Victorian Government introduced reforms to the <i>Planning and Environment Act 1987</i> which included a definition of 'affordable housing' and encouraged the use of Section 173 agreements to secure negotiated outcomes through planning scheme amendments and planning permit applications. • There has been broad support for the definition (which has helped to overcome differing interpretations and expectations) but the emphasis on voluntary negotiations does not appear to have significantly increased supply. • Research led by the University of Melbourne has identified and assessed the key barriers to affordable housing agreements, which include lack of incentives for developers, limited capacity 	
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¹ MAV (2021) 'Members Brief: Social and Affordable Housing Update #1', July 2021.

	<p>to enforce negotiated contributions, and lack of skills and knowledge across the key stakeholder groups.²</p> <ul style="list-style-type: none"> • The research, which is based on a survey of almost 150 stakeholders, concludes that a majority of developers, financiers, local government and not-for-profit providers prefer consistent mandatory affordable housing requirement for all developments. • A 2018 VCAT decision (<i>Panorama Investment (Box Hill) Pty Ltd v Whitehorse CC [2018] VCAT 1490 (25 September 2018)</i>) also reaffirmed that Councils are unable to require developers to enter into affordable housing agreements, particularly in the absence of a clearly articulated local justification and policy basis. • The definition of affordable housing under the <i>Planning and Environment Act 1987</i> is 'housing that is appropriate for needs of any of the following: <ul style="list-style-type: none"> ○ very low income households; ○ low income households; ○ moderate income households' • It is difficult to secure affordable housing contributions for very low income households through the voluntary negotiation process. While very low income households have been identified as the group in greatest need of affordable housing in Brimbank, there is limited scope for council to encourage applicants to provide a housing contribution (i.e. discount on market value) that would provide for very low income households. Most commonly, affordable housing contributions are targeted at moderate income households. • Increasingly, Council is losing their power as the Responsible Authority and/or Planning Authority in relation to State significant projects. In these instances, the State government and State government agencies should ensure that meaningful affordable housing contributions are sought, and where State government is responsible for development, meaningful affordable housing contributions are provided. • Council's input into the MAV submission to the MAC highlighted the need for the Victorian Government to work with local government to test and model any proposed changes to the planning framework for affordable housing; allocate sufficient resources to support implementation and enforcement; and consider further reviews of planning controls to establish clearer decision making and assessment criteria. 	
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² Raynor et al (2020) Confusing and not delivering enough: developers and councils want new affordable housing rules, The Conversation, 22 June 2020, <https://theconversation.com/confusing-and-not-delivering-enough-developers-and-councils-want-new-affordable-housing-rules-139762>, accessed January 2022.

	<ul style="list-style-type: none"> The Final Report of the Parliamentary Inquiry on Homelessness in Victoria recommends that the Victorian Government 'investigate implementing a mandatory inclusionary zoning mechanism that would require a portion of any new major housing development be allocated to social or affordable housing'.³ 	
<p>(2) Environmental sustainability and vegetation protection.</p>	<p>In 2020 Council submitted to the Parliamentary Inquiry into Ecosystem Decline. The TOR for this inquiry included 'the adequacy of the legislative framework protecting Victoria's environment, including grasslands, forests and the marine and coastal environment, and native species', Council's submission included a discussion of the <i>Planning and Environment Act 1987</i>, and other related legislation. The Committee is encouraged to review the submission and any findings from the Inquiry.</p> <p>Notwithstanding the above, Council officers offer the following comments:</p> <p><i>The Planning and Environment Act 1987</i> is quite strong when it comes to provisions for environmental sustainability and vegetation protection, however, in practice it is difficult to implement the requirements of the <i>Act</i> and, key objectives can be compromised to deliver a development outcome.</p> <p><i>Clause 52.17 and Guidelines for the Removal, Destruction, or Lopping of Native Vegetation 2017</i></p> <p><i>Avoid and minimize hierarchy</i></p> <p>The 'avoid' and 'minimise' approach adequately identifies an appropriate hierarchy to support the protection for native vegetation. However, in many cases, there is too much reliance on offsets to provide ecosystem protections in the first instance.</p> <p><i>Mapping and modelled data</i></p> <p>Reliance on mapping and modelled data to inform decision making under clause 52.17 can be fraught, as data is often outdated or incorrect. When data is known to be incorrect, the ability to be flexible in the use of alternative, accurate information is required.</p>	<ol style="list-style-type: none"> 1. Ensure that modelled data is current, accurate and reliable. Metadata should be managed and updated in a timely manner. 2. Provide guidance to respond to situations where modelled data is known to be incorrect or outdated. 3. Increase penalties for illegal clearing to ensure that they act as a deterrent. 4. Investigate the establishment of a 'panel' of accredited assessors, where applicants are allocated assessors with ecosystem relevant knowledge and the panel would independently ensure that guidelines are adhered to. This could also benefit applicants/proponents who could gain greater certainty and understanding of costs and timelines in advance. 5. Allow for decision makers to consider the cumulative loss of vegetation and habitat below 0.4ha. 6. Strengthen the alignment between the <i>Planning & Environment Act 1987</i>, and the <i>Flora and Fauna Guarantee Act 1988</i>, which protects

³ Parliament of Victoria (2021) *Legal and Social Issues Committee Inquiry into homelessness in Victoria: Final Report*, PP No. 208, tabled 4 March 2021

	<p><i>Compliance on illegal clearance</i></p> <p>Greater clarity on compliance for illegal vegetation clearance is required. In particular, any compliance measures in relation to illegal clearance of vegetation needs to be enforceable.</p> <p><i>Quality of Biodiversity Assessments</i></p> <p>A reliance on applicant and proponent driven assessments increases the potential for bias and perceived bias in biodiversity assessments. This can lead to extended time frames and costs for all stakeholders, especially councils, if the assessment is queried and a peer review, including re-surveying, is required.</p> <p><i>Cumulative impacts and connectivity</i></p> <p>The purpose of Clause 52.17 is to <i>ensure there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation</i>. This clause provides some protection for native vegetation and connectivity. However, due to the exemption for native vegetation that is on land with an area of less than 0.4 hectares, there is limited ability to take into account cumulative losses and the value of patches of vegetation or habitat within the landscape of areas smaller than 0.4ha in size. Fragments of vegetation and habitat within the landscape are critical for connectivity, and the long term sustainability of larger patches. The cumulative impact of the removal of many 0.4 ha patches over time, results in a huge loss to landscapes and ecosystems, and can lead to local species extinction.</p>	<p>Victorian biodiversity and its significant species on public land. In particular, the <i>Planning and Environment Act 1987</i> should enable the application of the <i>Flora and Fauna Guarantee Act 1988</i> on private land.</p>
<p>(3) Delivering certainty and fairness in planning decisions for communities, including but not limited to –</p> <ul style="list-style-type: none"> (a) mandatory height limits and minimum apartment sizes (b) protecting Green Wedges and the urban growth boundary (c) community concerns about VCAT appeal processes (d) protecting third party appeal rights (e) the role of Ministerial call-ins. 	<p><i>Mandatory Height Limits</i></p> <ul style="list-style-type: none"> • The removal of mandatory height controls in residential zones is not supported. These controls provide certainty to residents regarding how they can expect their neighbourhood to be developed and signals to permit applicants the form in which areas should be developed. • Mandatory maximum height limits within Activity Centres can also be a useful tool, particularly when combined with a preferred maximum height limit. This approach has the benefit of establishing the absolute maximum height that an activity centre could accommodate, where appropriate consideration has been given to the impacts that reaching this height could have 	<ol style="list-style-type: none"> 1. Continue to provide for strategically justified, proportionate and clearly worded mandatory height controls. 2. Continue to provide for strategically justified and proportionate minimum amenity standards for residential development. 3. Engage with DELWP regarding the progress of their reforms relating to planning for Melbourne’s Green Wedges and Agricultural Land, and review Council’s position as

	<p>on the public realm, vistas and view lines, internal and external amenity and building design. A preferred maximum height signals a height that could generally be accommodated in a particular location, subject to a planning assessment. The difference between the preferred maximum and mandatory maximum height limit also allows councils to enter into negotiations regarding contributions that applicants could make in order to offset the potentially negative impacts that exceeding the preferred maximum height limit could have on an area.</p> <ul style="list-style-type: none"> • For example, Schedule 1 to the Activity Centre Zone (Sunshine Town Centre) states that where a building exceeds the preferred maximum building height, the responsible authority must consider whether a net community benefit results from the buildings and works. This enables council to consider whether a public realm improvement or affordable housing contribution (for example) could, on balance, result in a development that despite exceeding the preferred maximum height, results in a good outcome for the community. • Poorly worded or unclear mandatory height controls however, can cause confusion at all stages of the planning permit application process and result in a considerable waste of resources. This is particularly the case where different views on the interpretation of mandatory controls require mediation through VCAT. A consistent approach to crafting mandatory height controls is required to provide certainty and clarity for all stakeholders. <p><i>Minimum apartment sizes</i></p> <ul style="list-style-type: none"> • Minimum apartment sizes, and other measures that regulate basic amenity standards for residents through planning schemes, are supported in principle. • However, Council officers acknowledges that there is a balance to be struck between an overly prescriptive and regulated planning system that stymies innovation, and the poor outcomes that an unregulated free-market can deliver. • Therefore, evidenced based design solutions that can support sustainable apartment development for a diverse range of people, is encouraged. Both numerical standards and mandatory 	<p>articulated in its submission to the proposed options.</p> <ol style="list-style-type: none"> 4. Investigate options to improve the ability and confidence for self-represented community members to appear at VCAT. 5. Investigate options to reduce the lengthy timeframes associated with VCAT appeals. 6. Develop a transparent, consistent, community engagement strategy for those classes of application that are exempt from planning scheme requirements. This strategy should afford community members the opportunity to have their views heard in relation to development that will impact them. 7. Progress greater investment by State Government to ensure there is a viable future for landowners in the Green Wedge that is complementary and balanced with the operation of Melbourne Airport.
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	<p>requirements can be used to meet amenity objectives, depending on location and context.</p> <ul style="list-style-type: none"> Substantial residential growth will be accommodated in Brimbank, predominantly in the Sunshine Priority Precinct. Much of this development will be in the form of higher density, townhouse and apartment style development. In order to ensure that new development is appropriate and attractive to the existing and future Brimbank community, it is important to ensure that high-quality, affordable residential development is delivered. Minimum standards for development, including minimum apartment sizes, articulated through planning schemes could support this objective. <p><i>Protecting green wedges and urban growth boundary</i></p> <ul style="list-style-type: none"> In November 2020 DELWP released the <i>Planning for Melbourne's Green Wedges and Agricultural Land Consultation Paper</i>. The consultation paper outlined options that sought to strengthen protections of agricultural land and guide decision making in green wedge and peri-urban areas around Melbourne. Council endorsed a submission to the consultation paper in February 2021 and is still awaiting the release of consultation findings by DELWP. Given that the consultation paper proposed options to strengthen protections for the green wedge, including the urban growth boundary, the Committee is encouraged to review the consultation paper and engage with DELWP regarding findings from the consultation. Council's submission articulates Council's position on protecting green wedges and the growth boundary. The Brimbank Green Wedge Management Plan aims to protect a number of values within the Brimbank portion of the Sunbury Green Wedge. This includes seeking to protect environmental assets, waterways and other identified values. The Plan also seeks to protect the green wedge by preventing non-green wedge uses and development and protecting the integrity, environmental and landscape qualities of the green wedge area. There are a range of competing interests in the Sunbury Green Wedge. In particular, its role in protecting the operations of Melbourne Airport while also protecting environmental values (that aren't necessarily congruent with the operation of an airport). Further, the restrictive nature of the Green Wedge, combined with the limited water supply and productive values of 	
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	<p>the land is limiting opportunities to (appropriately) develop land. Greater investment is needed from State government to ensure there is a viable future for landowners in the Green Wedge that is complementary and balanced with the operation of the airport.</p> <p><i>VCAT appeal processes</i></p> <ul style="list-style-type: none"> • The VCAT appeal process is lengthy, resource intensive and applied unequally across the range of applications types (i.e. exemptions from third-party appeal rights). • Appeal processes have become increasingly litigious, technical, intimidating and inaccessible for community members who may have no prior involvement with Tribunal processes. • Lengthy wait times to schedule a hearing, and then to receive a decision, can result in significant financial losses for applicants which can impact overall development feasibility. <p><i>Protecting third-party appeal rights</i></p> <ul style="list-style-type: none"> • Third party appeal rights are a fundamental component of the Victorian Planning System. These rights provides the opportunity for communities to be involved in the development of their neighbourhoods, and supports transparent decision making processes. Council supports the rights of affected parties to be informed, and seek review of planning decisions that impact the environment they live and work in. • Recent State-led amendments to Planning Schemes aimed at facilitating streamlined decision making for State significant projects, economic recovery and affordable housing developments have reduced opportunities for communities to inform themselves of and be involved in projects that may have significant impacts on their neighbourhoods. In particular, clauses 52.20 (Victoria’s Big Housing Build), 52.30 (State projects), 52.31 (Local government projects) and 53.20 (Housing by or on behalf of the director of housing) all provide for exemptions from third-party appeal rights. This inconsistent approach to community consultation through the planning system creates confusion and uncertainty, and places pressure on Council and council officers to explain these changes. 	
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	<ul style="list-style-type: none"> This is in contrast to Brimbank’s <i>Community Engagement Policy</i> (2021) which articulates Council’s commitment to undertaking best practice community engagement in accordance with the Victorian Auditor General’s Office, Public Participation Principles and the International Association of Public Participation (IAP2), which are also in response to legislative requirements in relation to community engagement, of the <i>Local Government Act 2020</i>. Given this, the community may perceive or experience a disconnect between the level of engagement they expect (in accordance with Council’s <i>Community Engagement Policy</i>) on projects that impact them, and the actual engagement that is undertaken in association with projects that benefit from planning scheme exemptions. 	
<p>(4) Protecting heritage in Victoria, including but not limited to –</p> <ul style="list-style-type: none"> (a) the adequacy of current criteria and processes for heritage protection (b) possible federal involvement in heritage protection; (c) separating heritage protection from the planning administration (d) establishing a heritage tribunal to hear heritage appeals (e) the appointment of independent local and state heritage advisers (f) the role of Councils in heritage protection (g) penalties for illegal demolitions and tree removals. 	<p><i>Current criteria and processes for heritage protection</i></p> <ul style="list-style-type: none"> <u>Heritage criteria</u> – The HERCON Criteria are considered fit for purpose, and directly related to the Australia ICOMOS Burra Charter, which is the guiding document for heritage conservation in Australia. A weakness is that the general population does not know, or in some cases understand, the criteria and how they are applied to determine if a place (or precinct) warrants heritage protection. There is also a lack of guidance for heritage professionals about how to determine thresholds defining what should or should not be protected in a given municipality. <u>Processes for heritage protection</u> – The amount of documentation required in heritage citations has greatly increased over the past 30 years, contributing to increasing costs of assessments and studies for LGAs with limited funds. This can result in important heritage places going unidentified or unprotected. The planning amendment process can also be expensive, especially when a Planning Panel hearing is required. <p><i>Possible federal involvement in heritage protection</i></p> <ul style="list-style-type: none"> Federal involvement in heritage protection brings with it the danger of over-centralisation, and a blanket approach that is not necessarily appropriate for the heritage of the different states/territories and the LGAs within them. With heritage and its management, it’s never “one size fits all”. 	<ol style="list-style-type: none"> Develop a guidance document that is clear to the general public on how the HERCON Criteria work, how they are applied, and how to determine thresholds of local significance (similar to the document that covers this for State-level significance: Heritage Council’s ‘<i>The Victorian Heritage Register Criteria and Threshold Guidelines</i>’). Provide State government financial and in-kind support to LGAs that require it, to ensure that they have the funds and know-how to commission and project manage a heritage study from start to finish, and then implement its recommendations. Further to Recommendation 2, explore streamlined approaches to heritage study documentation, to bring down overall costs. Federal involvement is best focused on enlarging the National Heritage List (NHL), not local heritage

	<p><i>Separating heritage protection from the planning administration</i></p> <ul style="list-style-type: none"> • Planning and heritage matters are integrally related and it is not useful to separate, however, poor outcomes for heritage when heritage impacts are not duly taken into account during the planning process. This can occur when an LGA does not have access to professional heritage advice (e.g. a council heritage advisor). In other cases, zoning, structure plans or other planning controls on a heritage place (or precinct) may directly conflict with the conservation of heritage values, and deliver an undesirable outcomes (e.g. industrial zoning for a heritage homestead and outbuildings, five-storey height limit placed on a two-storey heritage building, residential growth zone placed on an HO precinct of single-storey detached heritage houses). • If planning and heritage matters are separated, it furthers the risk of isolated decisions based on either one factor or the other, subsequently achieving a compromised outcome either for the development or heritage protection. <p><i>Establishing a heritage tribunal to hear heritage appeals</i></p> <ul style="list-style-type: none"> • There are concerns about inconsistent VCAT outcomes where some members do not give due weight to heritage significance at hearings, while others do. • Planning Panels Victoria appear to have successfully resolved this type of issue by engaging a range of sessional members who are heritage professionals (e.g. heritage planners, heritage architects) who are engaged for hearings that are principally or solely concerned with heritage. <p><i>The appointment of independent local and state heritage advisers</i></p> <ul style="list-style-type: none"> • When LGAs have sufficient funding, the current system of contracted council heritage advisors works well. This includes sufficient funding for the heritage advisor to go beyond just commenting on planning permit applications, but to also provide free consultations and advice to property owners, and to provide regularly formal and informal heritage training to council planners and other staff. • While metropolitan LGAs are often able to provide this full-range heritage advisory service, many others are restricted by budget, either allowing all heritage advice costs to fall to the applicant or relying on untrained council planners to assess heritage-related applications. • Importantly, council heritage advisors often gain extensive local knowledge of heritage place local conditions and of community 	<p>places, so that it is truly representative of those places of significance to the entire nation, and providing generous grants funding for these places.</p> <ol style="list-style-type: none"> 5. The current approach that makes Heritage Victoria the referral authority for places on the NHL should be continued as it uses local knowledge of the heritage places and minimises unnecessary red tape. 6. Provide State government guidance and support for LGAs to review existing and future planning controls to ensure that they do not conflict with properties/precincts in the Heritage Overlay. 7. Reinstate State government funding (part or full depending on need) of a dedicated Heritage Advisor for each LGA. 8. Require that VCAT appoint more members with recognised expertise in heritage management, and ensure that they are involved in matters where heritage is a main issue. 9. Ensure that there is financial and in-kind support from the State government to LGAs to ensure they can adequately identify, protect and manage their heritage. The State government should also monitor the heritage protection activities of councils to ensure they are meeting their obligations. 10. State government to lead the implementation of planning
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	<p>contacts. There would be a negative impact if this role was overly centralised.</p> <ul style="list-style-type: none"> Heritage advisors that have been engaged by permit applicants may not always provide, or may not always be perceived to provide, unbiased advice. In these instances, it is important to have council heritage advisors to peer review heritage submissions. Without a council heritage advisor, it is difficult for planning officers to put forward an informed, alternative position. Ultimately, any additional 'centralised' support or funding for council to engage heritage professionals will assist in considering heritage matters and lessen the administrative and financial burden to local government. <p><i>The role of Councils in heritage protection</i></p> <ul style="list-style-type: none"> When councils have sufficient funding and professional support from a heritage advisor, they are generally in the best position to protect their local heritage. <p><i>Penalties for illegal demolitions and tree removals</i></p> <ul style="list-style-type: none"> While there are stronger new controls in the <i>Planning and Environment Act 1987</i> to penalise illegal demolition of heritage places, including demolition by neglect, there is a lack of guidance from State government on how these should be implemented into planning schemes. The approach of restricting future development opportunities in the face of illegal demolition, instead of just financial penalties, which do not serve as a real deterrent to developers, is welcome. <p><i>Other issues</i></p> <ul style="list-style-type: none"> Local heritage enriches everyone in Victoria, and the economic impost on the owners (custodians) of heritage places should be recognised and their preservation of these places supported where necessary. In low socio-economic areas the costs of preparing a planning permit application (using heritage professionals) and carrying out conservation works to the required standard (often with specialist trades and materials) can be prohibitive. Grants programs can be very effective both in assisting disadvantaged property owners to do essential works, and to seed conservation works that improve the appearance of heritage properties that would otherwise not have happened. 	<p>policy/controls to give effect to the changes to the Planning and Environment Act 1987 relating to demolition by neglect, including limiting the development opportunities of a site where illegal demolition has occurred as a deterrent. Additionally any 'demolition by neglect' control should be applied to all properties in the Heritage Overlay, rather than being site specific.</p> <p>11. Provide support and programs for owners to preserve heritage places. For example, a lottery that provides support to worthy projects, such as in Western Australia or the UK's Heritage Lottery. This could be 50% funding to private owners and a higher proportion for not-for-profit owners.</p>
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<p>(5) Ensuring residential zones are delivering the type of housing that communities want.</p>	<ul style="list-style-type: none"> • There is limited scope in the suite of residential zones to account for the diversity of community ‘wants’ across Victoria. It has become increasingly difficult and costly for local councils to advance residential housing policies that seek to respond to local conditions beyond building height and intensity. Local policy variations have become more difficult to implement since the release of PPNs 90 and 91, due to the need for an area to be ‘sufficiently special’ in order to justify a unique policy response. DELWP’s proposed ResCode reforms, which stem from the Red Tape Commissioner’s review into Planning and Building Approval Processes, also seek to further streamline the assessment of residential development, which may make it more difficult to respond to local conditions and community aspirations. • PPN91 is explicit that all residential zones allow for increased housing. It is therefore challenging to facilitate the development of separate or individual homes using the VPP provisions, or other planning policy, as limiting density is not possible under the zone. In Brimbank, there is a high demand (historically and currently) from buyers and renters for separate housing. This includes families including multi-generational families that make up a core segment of the Brimbank housing market. Despite this, there is very limited ability to plan for and encourage the development of separate houses that will meet the needs of the projected increase in families (at least 5,300 and up to 7,000 additional households) to 2041. This is in spite of the fact that significant housing growth can be accommodated in Sunshine and St Albans, and other locations within Brimbank, that is well in excess of the housing need for the projected population to 2041. <p>It is suggested that residential zones should be more flexible to support development of housing that will cater to the needs of the diverse Brimbank community, which includes a range of typologies (apartment, townhouse, separate house and residential facilities) for families (including multi-generational households), adult couple, lone person households and ageing populations.</p>	<ol style="list-style-type: none"> 1. Protect the ability for local difference to be identified, retained and enhanced (where appropriate) through Planning Schemes. Avoid a ‘one size fits all’ approach to planning for residential areas by supporting the development of local planning policy. 2. Investigate opportunities for residential zones and local policy to respond to the need for new, separate houses, suitable for families, including multi-generational families. 3. Ensure that the implications of State planning policy reforms on councils and local communities are well considered. 4. Support the development of integrated and strategic planning policy reform at the State level, including between State government departments and agencies. 5. Ensure that State Government delivers a consistent and clear approach to the preparation of housing strategies and provide additional support in the efficient implementation of residential zones.

	<ul style="list-style-type: none"> • Critically, Council and the Brimbank community need consistency in residential planning policy from the State government. It is difficult to implement long term, strategic planning for housing when the planning framework and operation of the residential zones is undergoing constant reform at the State level. Given the number of changes to the residential zones over the past 15 years, it is challenging to undertake a robust policy evaluation to ascertain whether or not the residential zones are delivering the housing that communities want. • Ongoing changes to residential planning policy at the State level has significant implications for local councils. In 2018/19, Council invested a significant amount of time and resources into the development of a draft neighbourhood character study in order to respond to changes to the residential zones implemented through VC110. The draft Study involved extensive community consultation, including with DELWP officers, who were involved throughout the development of the draft study. In December 2019, DELWP released PPN90 (Planning for housing) and PPN91 (Using the residential zones) which changed expectations for growth in the residential zones. This had consequential impacts on the draft neighbourhood character study which meant that Council was unable to finalise or implement the findings and recommendations from the draft Study without further work and refinement. • To account for the shift in policy triggered by PPNs 90 and 91, Council has embarked on a new suite of projects and engaged a number of consultants in order to develop and implement local housing and neighbourhood character strategies. In November 2021, DELWP released a discussion paper and called for submissions on proposed reforms to the ResCode system. These proposed changes have again threatened the certainty of Council's approach to the project design and implementation tools proposed by the new housing strategy and neighbourhood character strategy. This is concerning for Council officers who, since 2017, have been seeking to develop and implement housing and neighbourhood character strategies in accordance with State government requirements. • Developing housing and neighbourhood character strategies comes at a significant cost to councils. When these strategies are unable to be implemented, it results in a substantial financial loss and waste of scarce resources (i.e. officer time) 	
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	<p>which is particularly problematic in a rate capped environment. Additionally, it erodes community trust as strategies that are consulted on end up sitting idle and the views of community left unable to be acted on. But most importantly, without the necessary housing strategies in place, there is potentially an ineffective distribution of residential zones across the municipality which are leading to inappropriate development outcomes.</p> <ul style="list-style-type: none">• Council officers strongly recommend that the Committee inform itself on the program of planning policy reforms currently in development by the State government, to ensure that any recommendations from this inquiry are strategic, integrated and do not result in wasted resources or further uncertainty, for local councils or communities.	
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Other Council Submissions

Links to relevant Council submissions to State Government reforms and other inquiries are provided below:

- [10 Year Social and Affordable Housing Strategy Discussion Paper](#)
- [Parliamentary Inquiry into Homelessness in Victoria](#)
- [Planning for Melbourne's Green Wedges and Agricultural Land](#)
- [Improving the Operation of ResCode](#)
- [Western Metro Land Use Framework Plan](#)
- [Planning and Building Approvals Process Review](#)
- [ESD Roadmap for Victoria's Planning System](#)
- [Draft Greening and Cooling provisions](#)
- [Legislative Council Environment and Planning Committee's Inquiry into Ecosystem Decline in Victoria.](#)