

PLANNING PANELS VICTORIA

IN THE MATTER OF AMENDMENT C376 TO THE MELBOURNE PLANNING SCHEME

PART B SUBMISSIONS ON BEHALF OF THE PLANNING AUTHORITY

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INTRODUCTION

1. These Part B submissions are made on behalf of Melbourne City Council (**Council**).
2. They should be read together with:
 - a) Council's Part A submissions filed on 5 August 2024; and
 - b) the Day 1 Version of the Amendment ordinance, filed on 14 August 2024.
3. Defined terms in these submissions have the same meaning given to those terms in the Part A submissions, unless otherwise indicated.
4. These Part B submissions address the following matters:
 - a) the purpose of and need for the Amendment;
 - b) a thematic response to matters raised in submissions and by the Panel;
 - c) matters raised in expert evidence; and
 - d) Council officers' final position on the Amendment.

PURPOSE OF AND NEED FOR THE AMENDMENT – CLIMATE EMERGENCY

Introductory

5. The scope of the climate challenge cannot be understated. In the recent landmark decision of the Land Court of Queensland in *Waratah Coal Pt Ltd v Youth Verdict Ltd & Ors (No 6)*,¹ the Court stated:

The remaining global carbon budget to keep the temperature to 1.5°C in 2100 is 320 Gt. At the current rate of global emissions, that will be exhausted in eight years. The remaining carbon budget to keep temperatures to well below 2°C by 2100 is 620 Gt. At the same rate, it will be exhausted in 15.5 years.

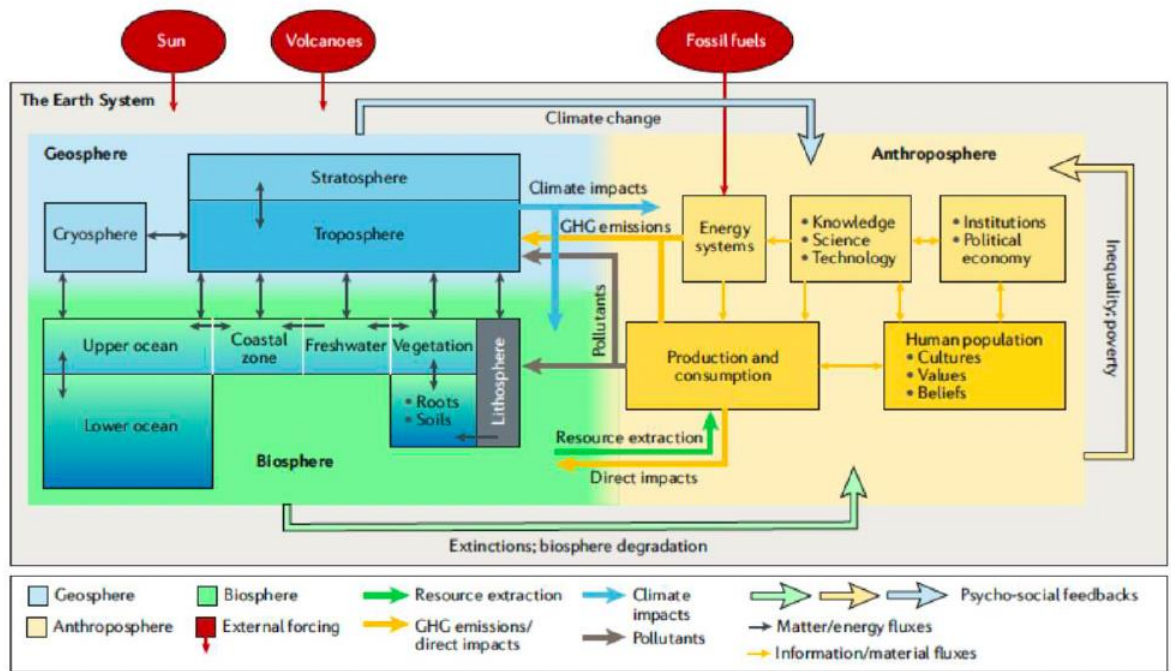
6. In describing climate change, and the effect of greenhouse gas emissions, the Court stated:²

The parties agree that, since the industrial revolution, human activity has caused the emission into the atmosphere of GHGs which have caused climate change impacts.

The climate change experts referred to the Earth System to explain their evidence about the causes and impacts of climate change. The Earth System is defined as the suite of interlinked physical, chemical, biological and human processes that cycle (transport and transform) materials and energy in complex, dynamic ways within the system. It is illustrated by this conceptual systems dynamics model:

¹ [2022] QLC 21.

² [2022] QLC 21, [594], [597]-[600], [602]-[604], [606]-[608].



Using the Earth System, the Court is part of the anthroposphere as an institution within a decision making framework that can determine whether or not an activity that will emit GHGs can proceed.

The following are a few examples of the many individual processes that interact to form the Earth System, our 'life support system' in which the biosphere plays a vital role in the stable functioning of the planet as a whole:

- The stratospheric ozone layer filters most of the damaging ultraviolet radiation from the sun, allowing life to flourish on the surface of the Earth.
- The troposphere (lower atmosphere) carries freshwater (via evaporation, cloud formation and rainfall) around the planet in complex ways, ultimately carrying water derived from the ocean and then dropping it over land, allowing ecosystems to flourish.
- Vegetation absorbs CO₂ from the atmosphere (it uses the carbon from CO₂ as the building blocks of life), thus regulating the Earth's energy balance.

GHGs absorb outgoing infrared (long wave) radiation (heat) from the Earth's surface and re-emit it in all directions. Some re-emitted heat remains in the lower atmosphere. The effect of re-emitted heat is measured as radiative forcing. When the measure of radiative forcing is positive, it warms the Earth's lower atmosphere, increasing the global average surface temperature.

As a fraction of overall human-driven warming, the most important GHG is CO₂. CO₂ emissions are primarily a function of human activities such as fossil fuel combustion and land use changes. Total GHG emissions are expressed in carbon dioxide equivalents (CO₂-e).

Atmospheric CO₂ acts as the 'thermal regulator' of the Earth System, and is an integral component of the planet's carbon cycle. About 44% of CO₂ emissions remain in the atmosphere, accumulating from year to year. The remainder is absorbed by land vegetation and the ocean. Plants absorb CO₂ from the atmosphere to power their growth and emit CO₂ back to the atmosphere as part of their metabolism. Geophysical processes, such as the dissolution and release of CO₂ to and from the ocean also play a crucial role in the planetary metabolism.

There is a near-linear correlation between the cumulative emissions of CO₂ and the rise in global average surface temperature using a pre-industrial baseline.

The pre-industrial baseline for global average surface temperature is the 1850-1950 average. By 2020, the global average surface temperature had increased by 1.2°C or, if the 2011-2020 average is used, by 1.09°C.

The pre-industrial baseline for atmospheric CO₂ concentration is taken at 1750, which was about 278 ppm. By 2020, the atmospheric concentration of CO₂ had increased to 412.5 ppm.

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The rate of growth in both global average surface temperature and atmospheric concentration of CO₂ has been increasing. The long-term trend from 1960 to date is one of accelerating temperature increases.

Atmospheric concentration of CO_{2-e} will stabilise when the addition of GHGs to the atmosphere by human activities is matched by their removal from the atmosphere by natural processes and human drawdown. That is when net-zero CO_{2-e} emissions is achieved.

Reaching net-zero will not lead to an immediate stabilisation of temperature, which depends on the scale and pace of emission reductions. There could be a significant lag between the two. Under lower emission scenarios the increase in atmospheric CO₂ concentrations would slow visibly after five to ten years, and the slowing of global surface warming would be detectable after 20 to 30 years. Under higher emission scenarios the lag could be centuries. However long it takes, the stabilisation temperature is directly proportional to the CO₂ concentrations at the time we reach net-zero emissions.

7. In relation to the impacts of climate change, the Court stated:³

The climate change experts agree human induced climate change has caused changes to the planet's atmosphere, oceans are heating at an increasing rate, polar ice is melting, extreme weather events are becoming more extreme, sea levels are rising, and ecosystems and species are being degraded or lost.

But this case is not about the current impacts of climate change, it is about the future.

The parties agree that if human beings continue to emit GHGs, then these will accrete in the atmosphere with GHGs already present there, causing increasingly adverse impacts to the health, life, and way of life, of human beings, individually, in communities and as a species, and of other species and ecosystems, and other components of the environment.

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The parties agree climate change impacts are not experienced in the same way everywhere. Professor Church and Dr Warren summed up the future impacts in Australia from climate change:

- *Warming will continue, with more extremely hot days and fewer extremely cool days. Heatwaves will become more frequent and more intense.*
- *Cool season rainfall will decrease across many regions of the south and east, likely leading to more time spent in drought. An increase in drought is also projected for the southwest of Western Australia.*
- *Sandstorms and dust-storms are projected to increase throughout Australia.*
- *The intensity, frequency and duration of fire weather is projected to increase throughout Australia, with a longer fire season for the south and east and an increase in the number of dangerous fire weather days.*

³ [2022] QLC 21, [609]-[611], [614], [628], [633].

- *More intense short-duration heavy rainfall events are projected throughout the country, along with an increase in heavy rainfall in general in the northern, central and eastern parts of Australia.*
- *There are likely to be fewer tropical cyclones, but a greater proportion are projected to be of high intensity, with ongoing large variations from year to year.*
- *There will be fewer east coast lows, particularly during the cooler months of the year. For events that do occur, sea level rise will increase the severity of coastal impacts.*
- *More frequent, extensive, intense and longer-lasting marine heatwaves will lead to increased risk of more frequent and severe bleaching events of coral reefs, including the Great Barrier and Ningaloo reefs.*
- *Acidification of the oceans surrounding Australia will continue.*
- *Sea levels are rising faster than the global average around northern Australia, and will continue to rise.*
- *Extreme sea level events will become more frequent. For most of the Australian coast, extreme sea levels that had a probability of occurring once in a hundred years are projected to become an annual event by the end of this century with lower emissions, and by mid-century for higher emissions.*

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Waratah accepts the adverse impacts described above will disproportionately affect:

- *children who are living now and are born in future, at an ever-increasing level into the future (in particular, present and future children will be at a disproportionately greater risk of poorer health outcomes and premature mortality); and*
- *older people, people living in poverty, other disadvantaged people, and First Nations Aboriginal and Torres Strait Islander peoples.*

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Finally, the parties agree that, eventually, the continued emission of GHGs into the atmosphere will destroy the health, life, and way of life, of many human beings and human communities; cause or contribute to the widespread extinction of many non-human species and ecosystems; and destroy the ecosystems and environments on which human and other life depends.

8. In relation to climate scenarios and the climate budget:⁴

Waratah refers in its submissions to the percentage the GHG emissions represent to annual Australian or global emissions. Assessments on an annual basis are unhelpful in understanding the contribution of emissions associated with the Project, over its life, to the atmospheric concentration of CO₂. In any case, the climate scientists stated the remaining carbon budget for keeping temperatures to 1.5°C in 2100 will be exhausted in 8 years at the current rate of emission, and to keep temperatures to well below 2°C by 2100 will be exhausted in 15.5 years.

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The parties asked the climate change experts to consider the implications of some indicative temperature points when the increase in temperature difference stabilises. The experts chose three scenarios, which I examine below.

⁴ [2022] QLC 21, [7[2022] QLC 21, [720], [722]-[723], [744], [747]-[748], [750], [751]-[753].

They said how quickly future climate change impacts are experienced, and how severe those changes are, will be driven for the next several decades by further human induced GHG emissions. In the longer term (centuries) this will be driven by both human emissions and feedbacks in the climate system. A feedback occurs when the climate impacts become self-reinforcing and create a risk of reaching a tipping point. A tipping point is a threshold where a tiny change could push the system into a new state.

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Climate scenario 1 is the best possible or near best possible outcome because it would stabilise global average surface temperature in 2100 at below 2°C above pre-industrial temperatures. It is consistent with the goal of the Paris Agreement and can be equated to 2 SSPs: SSP1-1.9 and SSP1-2.6.

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Climate scenario 2 would result in global average surface temperature stabilising in 2100 at or very close to 3°C above pre-industrial levels. It does not achieve the goal of the Paris Agreement. This scenario can be equated to SSP2-4.5, meaning it is a middle of the road pathway, or moderate action pathway, resulting in radiative forcing of 4.5. This scenario reflects the policy settings of national governments in 2021, which the IPCC estimated would result in temperature increases of between 2.7°C and 3.1°C above pre-industrial temperatures.

Climate scenario 3 is the worst possible outcome and can be equated to SSP5-8.5. The pathway is an SSP 5, which means it is a pathway of rapid growth, resulting in radiative forcing of 8.5, and a 4°C increase in temperature late this century, continuing to rise into the 22nd century and beyond. This is not a business-as-usual projection, and is only useful as a high-end, high-risk scenario.

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Further, the climate change experts caution that it may not be possible to stabilise the Earth System under climate scenario 2 at 3°C above pre-industrial levels. An increase in temperature of that nature may activate tipping points when feedback processes become self-reinforcing, initiating a tipping cascade. There is a very low probability of that occurring at a temperature increase in the range of 1.5-1.7°C, but the probability rises at an increasing rate after that. See Figure 16.15 below.

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The feedback processes include climate change-driven degradation of large biomes such as the Amazon rainforest and the boreal forests in Canada and Siberia; melting of polar ice such as the Arctic sea-ice over the north pole; enhanced melting of permafrost; and changes in ocean and atmospheric circulation, such as a weakening of the Atlantic Ocean thermohaline circulation.

Several of these processes operate over many centuries, potentially leading to a drift of the Earth System towards the hotter conditions of the SSP5-8.5 trajectory.

As well as physical tipping points, the IPCC uses the concept of social tipping points, to describe the destabilization of human societies at multiple scales, resulting from the impacts of climate change and the societal context in which that occurs. One type of social tipping point is when intangible elements that ensure the survival of individuals and communities are eroded or removed. An example the WGII used to illustrate this is the Millennium Drought in Australia which led to higher rates of male suicide, especially among farmers.

9. The scale of the challenge in responding and adapting to climate change is enormous.
10. As noted in the Part A submissions, the Amendment is a critical part of Council's strategic response to the climate emergency, and is the end product of a series of assessments directed

to considering how the planning system can drive improvement in the sustainability and performance of buildings in the municipality.

11. In that regard, it is important to understand where Council's role, as planning authority, sits in the regulatory hierarchy of responses to climate change.
12. The following submissions provide an overview of the framework and responses at the international, federal, state and local levels.

International obligations

13. The climate emergency was first explicitly recognised at an international level in 1992, by the ratification of the *UN Framework on Climate Change (UNFCCC)* by 197 countries. The UNFCCC established an annual forum, called the Conference of the Parties (**COP**), the purpose of which is to discuss measures to stabilise the concentration of greenhouse gases (**GHG**) in the atmosphere.
14. Subsequent COP forums have produced the two key international agreements on climate change:
 - a) The Kyoto Protocol, adopted in 1997, entered into force in 2005. The Kyoto Protocol was an international treaty that required developed (but not developing) countries to reduce GHG emissions by an average of 5 percent below 1990 levels, and set up a system of reporting. Australia was a party to the Kyoto Protocol.⁵ and
 - b) The Paris Agreement is a legally binding international treaty on climate change.⁶ It was adopted at COP21 (Paris) in December 2015, and came into force in November 2016.
15. The critical aims of the Paris Agreement are:⁷

Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production;

⁵ The Commonwealth government signed the Kyoto Protocol in 1998.

⁶ Available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf

⁷ Paris Agreement, Article 2.

16. The Paris Agreement, in essence, requires signatory countries to take necessary steps to rapidly reduce greenhouse gas emissions, in order to achieve the above aims; and further, to provide 5 yearly reports on actions taken to reduce emissions, and steps that will be taken to build resilience to adapt to the impacts of climate change.
17. The Paris Agreement obliges signatory countries to:⁸

reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.
18. Australia is a signatory to the Paris Agreement, and the obligations under the Paris Agreement are given legislative force by the *Climate Change Act 2022* (Cth)⁹ – addressed in more detail below.
19. Implementation and consideration of climate change responses at the international level are the focus of annual conferences of signatory parties to the Paris Agreement and Kyoto Protocol – known as the Conference of the Parties. The most recent conference, COP28 was held in Dubai in November and December 2023.
20. The Intergovernmental Panel on Climate Change (**IPCC**) is the United Nations body for assessing the science related to climate change. The IPCC provides periodic reports on the state of scientific knowledge of climate change, impacts and risks from climate change, and adaptation to and mitigation of those impacts and risks.
21. The most recent IPCC report is the Sixth Assessment Report, released in 2023. The Synthesis Report of the IPCC Sixth Assessment Report, Summary for Policymakers,¹⁰ states, *inter alia*:

Observed Warming and its Causes¹¹

A.1 Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020. Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and

⁸ Paris Agreement, Article 4.

⁹ Available at: <https://www.legislation.gov.au/C2022A00037/latest/text>

¹⁰ Available at: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf

¹¹ Document 25, Synthesis Report of the IPCC Sixth Assessment Report, Summary for Policymakers (**Synthesis Report**) PDF 4.

patterns of consumption and production across regions, between and within countries, and among individuals (high confidence).

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Observed Changes and Impacts¹²

A.2 Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people (high confidence). Vulnerable communities who have historically contributed the least to current climate change are disproportionately affected (high confidence).

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Current Mitigation Progress, Gaps and Challenges¹³

A.4 Policies and laws addressing mitigation have consistently expanded since AR5. Global GHG emissions in 2030 implied by nationally determined contributions (NDCs) announced by October 2021 make it likely that warming will exceed 1.5°C during the 21st century and make it harder to limit warming below 2°C. There are gaps between projected emissions from implemented policies and those from NDCs and finance flows fall short of the levels needed to meet climate goals across all sectors and regions. (high confidence)

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Future Climate Change¹⁴

B.1 Continued greenhouse gas emissions will lead to increasing global warming, with the best estimate of reaching 1.5°C in the near term in considered scenarios and modelled pathways. Every increment of global warming will intensify multiple and concurrent hazards (high confidence). Deep, rapid, and sustained reductions in greenhouse gas emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years (high confidence).

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Likelihood and Risks of Unavoidable, Irreversible or Abrupt Changes¹⁵

B.3 Some future changes are unavoidable and/or irreversible but can be limited by deep, rapid, and sustained global greenhouse gas emissions reduction. The likelihood of abrupt and/or irreversible changes increases with higher global warming levels. Similarly, the probability of low-likelihood outcomes associated with potentially very large adverse impacts increases with higher global warming levels. (high confidence).

...

Carbon Budgets and Net Zero Emissions¹⁶

B.5 Limiting human-caused global warming requires net zero CO₂ emissions. Cumulative carbon emissions until the time of reaching net zero CO₂ emissions and the level of greenhouse gas emission

¹² Document 25, Synthesis Report, PDF 5.

¹³ Document 25, Synthesis Report, PDF 10.

¹⁴ Document 25, Synthesis Report, PDF 12.

¹⁵ Document 25, Synthesis Report, PDF 18.

¹⁶ Document 25, Synthesis Report, PDF 19.

reductions this decade largely determine whether warming can be limited to 1.5°C or 2°C (high confidence). Projected CO₂ emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C (50%) (high confidence).

...

Mitigation Pathways¹⁷

B.6 All global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, and those that limit warming to 2°C (>67%), involve rapid and deep and, in most cases, immediate greenhouse gas emissions reductions in all sectors this decade. Global net zero CO₂ emissions are reached for these pathway categories, in the early 2050s and around the early 2070s, respectively. (high confidence)

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Urgency of Near-Term Integrated Climate Action¹⁸

C.1 Climate change is a threat to human well-being and planetary health (very high confidence). There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (very high confidence). Climate resilient development integrates adaptation and mitigation to advance sustainable development for all, and is enabled by increased international cooperation including improved access to adequate financial resources, particularly for vulnerable regions, sectors and groups, and inclusive governance and coordinated policies (high confidence). The choices and actions implemented in this decade will have impacts now and for thousands of years (high confidence).

...

The Benefits of Near-Term Action¹⁹

C.2 Deep, rapid, and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce projected losses and damages for humans and ecosystems (very high confidence), and deliver many co-benefits, especially for air quality and health (high confidence). Delayed mitigation and adaptation action would lock in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages (high confidence). Near-term actions involve high up-front investments and potentially disruptive changes that can be lessened by a range of enabling policies (high confidence).

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Governance and Policies²⁰

C.6 Effective climate action is enabled by political commitment, well-aligned multilevel governance, institutional frameworks, laws, policies and strategies and enhanced access to finance and technology. Clear goals, coordination across multiple policy domains, and inclusive governance processes facilitate effective climate action. Regulatory and economic instruments can support deep emissions reductions and climate resilience if scaled up and applied widely. Climate resilient development benefits from drawing on diverse knowledge. (high confidence)

¹⁷ Document 25, Synthesis Report, PDF 20.

¹⁸ Document 25, Synthesis Report, PDF 24.

¹⁹ Document 25, Synthesis Report, PDF 25.

²⁰ Document 25, Synthesis Report, PDF 32.

22. In relation to mitigation and adaptation options, the Synthesis Report states (emphasis added):²¹

Cities, Settlements and Infrastructure

C.3.4 Urban systems are critical for achieving deep emissions reductions and advancing climate resilient development (high confidence). Key adaptation and mitigation elements in cities include considering climate change impacts and risks (e.g., through climate services) in the design and planning of settlements and infrastructure; land use planning to achieve compact urban form, co-location of jobs and housing; supporting public transport and active mobility (e.g., walking and cycling); the efficient design, construction, retrofit, and use of buildings; reducing and changing energy and material consumption; sufficiency; material substitution; and electrification in combination with low emissions sources (high confidence). Urban transitions that offer benefits for mitigation, adaptation, human health and well-being, ecosystem services, and vulnerability reduction for low-income communities are fostered by inclusive long-term planning that takes an integrated approach to physical, natural and social infrastructure (high confidence). Green/ natural and blue infrastructure supports carbon uptake and storage and either singly or when combined with grey infrastructure can reduce energy use and risk from extreme events such as heatwaves, flooding, heavy precipitation and droughts, while generating co-benefits for health, well-being and livelihoods (medium confidence).

23. There is global consensus about the state of scientific knowledge of climate change, its effects, and what is required to limit warming to the 1.5 degree C target set by the Paris Agreement. In short, there is an urgent need to significantly decrease GHG emissions, and achieve net zero cumulative carbon emissions.
24. The Amendment is specifically directed to aiding that goal, given that built form outcomes are something that is within the control of Council as planning authority for the municipality of Melbourne (noting the point already made that Council is also fully supportive of a state-wide particular provision, with local schedules).

Commonwealth

25. As above, the Australian Commonwealth government has enacted the Cth CC Act, which among other things, gives legislative force to Australia's obligations under the Paris Agreement.
26. The objects of the Cth CC Act are:²²
- (aa) *to advance an effective and progressive response to the urgent threat of climate change drawing on the best available scientific knowledge; and*
 - (a) *to set out Australia's greenhouse gas emissions reduction targets which contribute to the global goals of:*

²¹ Document 25, Synthesis Report, PDF 29.

²² *Climate Change Act 2022* (Cth), s3.

- (i) holding the increase in the global average temperature to well below 2°C above pre-industrial levels; and
- (ii) pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels; and
- (b) to promote accountability and ambition by requiring the Minister to:
 - (i) prepare annual climate change statements; and
 - (ii) cause copies of those statements to be tabled in each House of the Parliament; and
- (c) to ensure that independent advice from the Climate Change Authority informs:
 - (i) the preparation of annual climate change statements; and
 - (ii) the greenhouse gas emissions reduction targets to be included in a new or adjusted nationally determined contribution.

27. Section 10 of the Cth CC Act set out Australia's emissions reductions targets:

- (1) Australia's greenhouse gas emissions reduction targets are as follows:
 - (a) reducing Australia's net greenhouse gas emissions to 43% below 2005 levels by 2030:
 - (i) implemented as a point target; and
 - (ii) implemented as an emissions budget covering the period 2021-2030;
 - (b) reducing Australia's net greenhouse gas emissions to zero by 2050.

28. Section 12 of the Cth CC Act requires the Minister for Environment to prepare an annual climate change statement that addresses, *inter alia*:

- a) progress towards achieving the legislated emissions targets; and
- b) risks to Australia from climate change impacts.

29. The second annual climate change statement (**2023 Statement**) was tabled in the Commonwealth Parliament on 20 November 2023.²³

30. In relation to climate risks and adaptation, the 2023 Statement states:²⁴

As the year draws to a close, 2023 is on track to be the warmest year on record, with heatwaves across the northern hemisphere summer and deadly wildfires in Canada and Hawaii. Australia had above-average rainfall for the first half of the year, contributing to flooding across the country. This year's bushfire season started early in northern and eastern Australia, and in some cases has affected communities that are still recovering from the 2019-20 Black Summer bushfires.

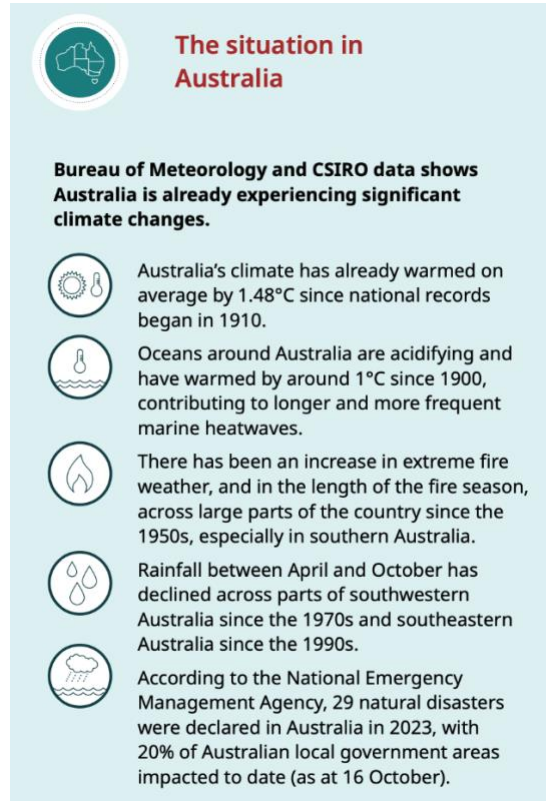
Even with strong global action to reduce emissions, the impacts of climate change will continue to be felt due to historical emissions. More frequent and intense natural hazards, among other impacts of climate change, underscore the importance of adaptation measures. Efforts are underway at all levels

²³ Available at: <https://www.dcceew.gov.au/sites/default/files/documents/annual-climate-change-statement-2023.pdf>

²⁴ Annual Climate Change Statement 2023, PDF 8.

of government to protect Australian communities and the environment from the impacts of climate change.

31. In relation to the current situation in Australia from climate change impacts, the 2023 Statement lists the following:

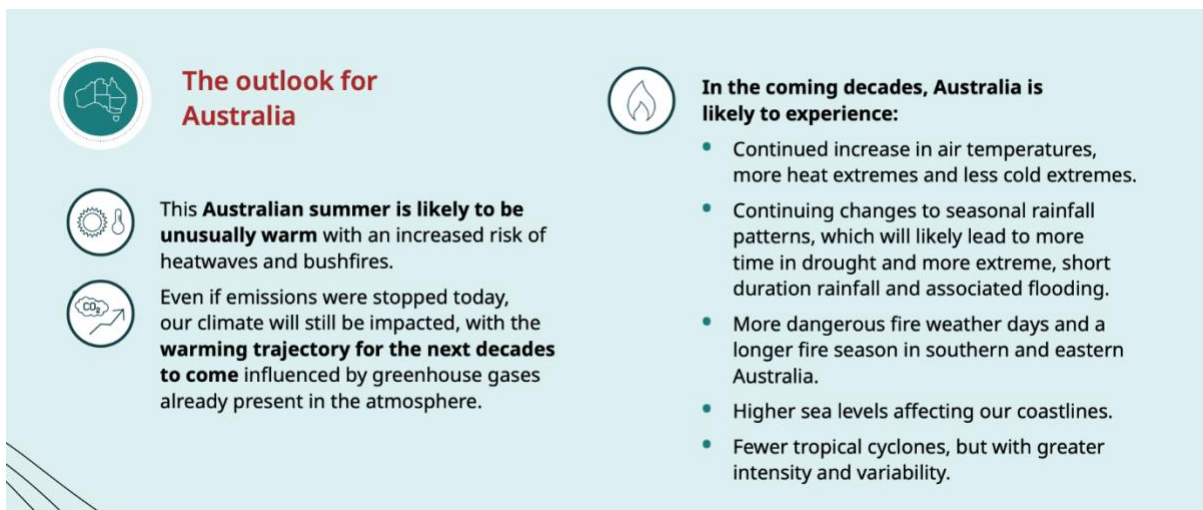


The situation in Australia

Bureau of Meteorology and CSIRO data shows Australia is already experiencing significant climate changes.

-  Australia's climate has already warmed on average by 1.48°C since national records began in 1910.
-  Oceans around Australia are acidifying and have warmed by around 1°C since 1900, contributing to longer and more frequent marine heatwaves.
-  There has been an increase in extreme fire weather, and in the length of the fire season, across large parts of the country since the 1950s, especially in southern Australia.
-  Rainfall between April and October has declined across parts of southwestern Australia since the 1970s and southeastern Australia since the 1990s.
-  According to the National Emergency Management Agency, 29 natural disasters were declared in Australia in 2023, with 20% of Australian local government areas impacted to date (as at 16 October).

32. In relation to the future outlook for Australia, the 2023 Statement states:²⁵



The outlook for Australia

-  This **Australian summer is likely to be unusually warm** with an increased risk of heatwaves and bushfires.
-  Even if emissions were stopped today, our climate will still be impacted, with the **warming trajectory for the next decades to come** influenced by greenhouse gases already present in the atmosphere.

In the coming decades, Australia is likely to experience:

- Continued increase in air temperatures, more heat extremes and less cold extremes.
- Continuing changes to seasonal rainfall patterns, which will likely lead to more time in drought and more extreme, short duration rainfall and associated flooding.
- More dangerous fire weather days and a longer fire season in southern and eastern Australia.
- Higher sea levels affecting our coastlines.
- Fewer tropical cyclones, but with greater intensity and variability.

²⁵ Annual Climate Change Statement 2023, PDF 9.

33. Section 14 of the Cth CC Act requires the Climate Change Authority to give advice to the Minister for Environment that relates to the preparation of the annual climate change statement. The Minister for Environment is required to have regard to that advice when preparing the annual climate change statement.
34. The Climate Change Authority's 2023 Annual Progress Advice Report (**2023 CCA Advice**)²⁶ provides 42 recommendations for further action to respond to climate change. Relevantly, those recommendations include the following:

Recommendation 3

Secure agreement with all levels of government on a framework to ensure that climate change risk and adaptation are factored into all policies and programs and their implementation, including but not limited to critical infrastructure, building codes, health, social services policies (such as those on public housing), transport, environmental protection, national security, and sectoral decarbonisation plans.

Recommendation 30

Work with state and territory governments to update the national waste policy action plan to specify achievable actions to increase the avoidance, recovery and recycling of organic waste across its lifecycle to reduce organic waste going to landfill. These actions should clearly address the barriers limiting the diversion of organic waste from landfill, including government operated landfill sites.

Recommendation 39

Work with state and territory governments to agree on a coordinated, nationally consistent approach to phasing out new gas connections for residential and small commercial buildings and phase-out for existing gas connections.

35. The 2023 Statement includes responses to the 2023 CCA Advice. In relation to each of the above recommendations, the Commonwealth government:

- a) Agrees in principle with Recommendation 3, noting that:²⁷

The existing Commonwealth-State agreement on roles in climate adaptation articulates a clear leadership role for the Commonwealth Government. For example, the Adaptation Working Group under the Energy and Climate Change Ministerial Council supports cross-jurisdictional consideration of key adaptation issues.

The National Adaptation Plan, to be delivered at the end of 2024, will further develop a shared understanding of nationally significant adaptation actions, and who is responsible for leading them. Determining responsibility will be guided by the existing agreement and consultation conducted in developing the National Adaptation Plan. The Commonwealth is also developing the Climate Risk and Opportunity Management Program for the Australian Public Service. This will include an online tool to assist with management and reporting of climate risks and this will be made available to all tiers of government to use when it is completed in 2024.

²⁶ Available here: <https://www.climatechangeauthority.gov.au/annual-progress-advice-0>

²⁷ Annual Climate Change Statement 2023, PDF 72-73.

- b) Agreed in principle with Recommendation 30, noting that the Commonwealth government “*is working with states and territories, industry and non-government organisations to strengthen the National Waste Policy Action Plan to make better progress towards the plan’s 2030 targets. An update of the plan is scheduled to be completed in 2024*”.²⁸
 - c) Disagreed with Recommendation 39, noting that “*decisions on planning and gas connections are a matter for state and territory government*”.²⁹
36. The Commonwealth government has numerous strategies in place and under investigation to respond to climate change, and its obligations under the Paris Agreement. Perhaps the most significant of those is the *Net Zero 2050 Plan*,³⁰ which was outlined in the 2022 Annual Climate Change Statement, and which is intended to set out policies and measures to achieve the legislated net zero target.
 37. The Net Zero 2050 Plan will address how emissions are to be reduced across six economic sectors: electricity and energy, transport, industry, agriculture and land, resources, and the built environment.
 38. In relation to the built environment sector, a ‘built environment plan’ is to be created covering residential and commercial buildings, as well as urban open spaces and water infrastructure. There is currently no publicly available (as far as Council is aware) information on the detail of the built environment plan.
 39. Independent advice from the Climate Change Authority will inform the Net Zero 2050 Plan. The CCA advice, and the Net Zero 2050 Plan process will include broad consultation. The timetable for the preparation of the Net Zero 2050 Plan anticipates finalising the plan by the end of this year, as Australia is required by the Paris Agreement to provide an update on its progress by the end of February 2025.

National Construction Code

40. In terms of existing ESD building standards forming part of the suite of responses to climate change at national level, it is relevant for the Panel to understand the effect of the National

²⁸ Annual Climate Change Statement 2023, PDF 82.

²⁹ Annual Climate Change Statement 2023, PDF 84.

³⁰ Information about the Net Zero 2050 Plan is available at: <https://www.dcceew.gov.au/climate-change/emissions-reduction/net-zero>

Construction Code (**NCC**).³¹ The NCC is prepared by the Australian Building Codes Board (**ABCB**). The ABCB is a joint initiative of the Commonwealth and state and territory governments, together with the building and plumbing industries.

41. The NCC provides the minimum required standards for construction of houses, apartments, offices and other building typologies, across the country, including in relation to energy efficiency.
42. The NCC was updated in 2019 to substantially increase the minimum energy efficiency provisions in the NCC. The NCC was further updated in 2022,³² and will be updated again in 2025. The Part A submissions, in Attachment 3, provide an assessment of the Amendment against the existing (2022) and proposed (2025) NCC standards.
43. Over time, as the construction standards and technologies, and understanding of energy efficiency and climate change have improved, so have the minimum constructions requirements for new building and building renovations embodied in the NCC. This evolution will continue to occur over time, and will continue to drive improvements in energy efficiency and sustainability requirements. However, the NCC will only ever set the minimum construction standards.
44. The way the NCC operates is to set, for different elements of a building:³³
 - a) objectives
 - b) functional statements that must be met;
 - c) building performance requirements, that must be met;
 - d) verification methods for demonstrating compliance with the performance requirements;

³¹ Given effect in Victoria through the *Building Act 1993* (Vic): s9, also s3 definition of “Building Code of Australia”; and, the *Building Regulations 2018* (Vic), r10.

³² The energy efficient and condensation mitigation requirements in the NCC 2022 commenced in Victoria on 1 May 2024.

³³ For example: Fire resistance (eg, fire resistant construction, fire performance, roof and wall penetrations), access and egress (eg, stairways, doors, disability access, signs), services and equipment (eg firefighting, smoke detection and hazards, lifts), health and amenity (eg, waterproofing, roof and wall cladding, toilets and sanitary facilities, room heights, ventilation), energy efficiency (eg, insulation, weather and air tightness, thermal performance, glass performance).

45. To assist the Panel with an example, Section J of the NCC addresses energy efficiency. Part J1 addressed energy efficiency performance requirements, and has the following objective (J1O1):

The Objective of this Section is to—

- (a) reduce energy consumption and energy peak demand; and*
- (b) reduce greenhouse gas emissions; and*
- (c) improve occupant health and amenity.*

46. The functional statement for energy efficiency (J1F1) is:

A building must—

- (a) reduce the energy consumption and energy peak demand of key energy using equipment; and*
- (b) reduce the greenhouse gas emissions that occur as a result of a building's energy consumption and energy source; and*
- (c) for a sole-occupancy unit of a Class 2 building or a Class 4 part of a building, improve occupant health and amenity by mitigating the impact of extreme hot and cold weather events and energy blackouts; and*
- (d) for other than in a sole-occupancy unit of a Class 2 building or a Class 4 part of a building, protect occupant health and amenity by ensuring the building envelope assists in the maintenance of acceptable internal conditions while the building is occupied; and*
- (e) be able to accommodate the future installation of distributed energy resources.*

47. There are then a set of performance requirements (J1P1 to J1P4) that must be met in relation to (depending on the type of building):

- a) energy use;
- b) thermal performance;
- c) and renewable energy and electric vehicle charging.

48. Finally, Part J1 lists verification methods that can be used to demonstrate compliance with those performance requirements. This includes, relevantly:

- a) obtaining a NABERS Energy Commitment Agreement (for the applicable star rating for the class of building): J1V1;
- b) registering the building for a Green Star rating: J1V2; or
- c) verifying the building against a specified reference building: J1V3.

49. As such, the use of independent industry tools like Green Star and NABERS is one way of demonstrating compliance with the minimum mandatory built form outcomes that are

required by the NCC. This is substantially the same as how the external ratings tools (Green Star, NABERS, NatHERS, BESS and the Green Factor Tool) are used by the Amendment – in that those tools are used to demonstrate compliance with the mandatory outcomes required by the DDO73.

50. Later parts of Section J set out which requirements apply to what building types (classes), and a series of “deemed-to-satisfy” solutions that are considered to comply with performance requirements J1P1 to J1P4.
51. In relation to interaction with the Amendment, there is nothing in the NCC that prevents local governments, as part of planning requirements, mandating or driving increased ESD outcomes for new developments. This was recognised by the Environmentally Efficient Design Local Policies Advisory Committee in 2014, when it stated:³⁴

The Committee notes the Government response to the VCEC Enquiry that the building system will be the primary and most efficient means for addressing the environmental performance of buildings. The Committee considers that there is little disagreement on this point; that is the minimum standards approach in the NCC is the ‘bottom line’ on this issue. The Committee does not consider this precludes, or should preclude, those Councils wishing to achieve a better outcome, provided it is not done via a mandatory control which imposes standards inconsistent with the NCC.

52. The Committee also stated:³⁵

Having reviewed the requirements associated with sustainable design, the Committee has 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. Each has a specific role to play and a limited sphere of influence. Planning does not cover all development, yet the building system does; similarly, building is not involved in influencing the initial design phase including orientation, subdivision and so on, nor can it require a greater level of compliance than what is set down under the BCA, yet planning can. Building cannot enforce the inclusion of sustainability features in development, yet planning can.

Given this, the Committee considers that what is required to achieve the greatest sustainability outcomes is an integrated approach between planning and building. What is important is that each has a clearly defined role to play and that they complement, rather than duplicate each other. The importance of an integrated approach has been recognised in Federal policy and COAG agreements.

The Committee considers planning is best suited to influencing the ‘bigger picture’ for that development which requires a planning permit and should be involved in the initial design phase, guiding developments in terms of orientation, integrated water and waste management, use of alternative energy sources, integrated transport and landscaping. It can also provide the legal framework to ensure these features are implemented through permits and the endorsement of plans. Yet the Committee considers

³⁴ Document 10f, *Environmentally Efficient Design Local Policies (AC)* [2014] PPV 40, pg 30, PDF 39.

³⁵ Document 10f, *Environmentally Efficient Design Local Policies (AC)* [2014] PPV 40, pg 61, PDF 70.

planning should not get involved setting specific energy efficiency ratings, or specifying the more detailed aspects of development, such as insulation and hot water services.

Recognising building is not able to influence these 'bigger picture' issues, the Committee is of the view that matters such as choice of building materials and products to be used in the construction and fit out of buildings are details that should remain primarily in the building approval process, and the BCA already contains mandatory provisions in this area. It is, of course open to an applicant to provide this information at the planning stage, but this should be on a voluntary basis as materials selected early in the design process may not be available at the construction phase, or indeed superior materials may be available at such time.

53. Council acknowledges the comments by the Committee at that time, that planning should not get involved in setting specific energy efficiency ratings. However, the state of play has moved on from that time. In particular, the current accelerating context of the climate crisis compels a different conclusion in 2024, than it did in 2014. The focus should rather be on ensuring that there is no inconsistency between the minimum standards set by the NCC, and the standards required by a planning control. As identified in Attachment 3 to the Part A submissions, there is no inconsistency between the Amendment and the NCC. Rather, the Amendment will require the relevant development typologies to achieve better performance outcomes than required by the NCC.
54. To the extent that it is suggested in submissions that it is the role of the NCC, and not a planning scheme, to determine the specifics of energy efficiency standards for buildings, Council reiterates that:
- a) the NCC sets minimum expectations only, at a national level;³⁶
 - b) the minimum standards in the NCC are inadequate to achieve net zero;
 - c) the planning system, including by the use of a DDO schedule, is explicitly equipped to drive built form outcomes at the planning stage; and
 - d) the municipality of Melbourne, as is the case for other capitals cities, bears a disproportionate burden in terms of mitigating the effects of climate change, because of the nature of buildings in the central city (in particular) which warrants a different and more elevated response than simple compliance with the minimum NCC standards.

³⁶ Noting that in some cases, there are state variations – for example, Victoria has a specific 7 star NatHERS requirement.

State of Victoria

55. The Victorian government has enacted the *Climate Change Act 2017* (Vic) (**Vic CC Act**).

56. The Vic CC Act, *inter alia*:

- a) legislates a long term emission reduction target of net zero greenhouse gas emissions by 2050: s6;
- b) requires interim emissions reductions targets to be set for each 5 year period from 1 January 2021 to 31 December 2050: s10;
- c) sets an expectation that any decision by the government and any policy, program or process developed or implemented by the government appropriately takes account of climate change: s20;
- d) sets the following policy objectives, in s22:
 - (a) *to reduce the State's greenhouse gas emissions consistently with the long-term emissions reduction target and interim emissions reduction targets; and*
 - (b) *to build the resilience of the State's infrastructure, built environment and communities through effective adaptation and disaster preparedness action; and*
 - (c) *to manage the State's natural resources, ecosystems and biodiversity to promote their resilience; and*
 - (d) *to promote and support the State's regions, industries and communities to adjust to the changes involved in the transition to a net zero greenhouse gas emissions economy, including capturing new opportunities and addressing any impacts arising from the need to reduce greenhouse gas emissions across the economy; and*
 - (e) *to support vulnerable communities and promote social justice and intergenerational equity.*
- e) by s29, requires the preparation of a 5 yearly climate change strategy, which must address:
 - a statement of priorities;
 - an adaptation component; and
 - an emissions reduction component;
- f) by s34, requires the preparation of a 5 yearly adaptation action plan, in respect of the following systems:
 - (a) *the built environment system;*
 - (b) *the education and training system;*

- (c) *the health and human services system;*
- (d) *the natural environment system;*
- (e) *the primary production system;*
- (f) *the transport system;*
- (g) *the water cycle system;*
- (h) *any other prescribed system.*

57. The most recent Victorian Climate Change Strategy (**Vic CC Strategy**) was published in 2021.³⁷ The Vic CC Strategy identifies a five point plan for lowering emissions:³⁸

A clean energy economy.

Innovation for the future.

Resilient farms and forests.

Climate smart businesses and communities.

A climate resilient Victoria.

58. Relevantly:

- a) in relation to strategies to achieve “A clean energy economy” the strategy states:³⁹

Improving the energy efficiency of our homes and other buildings makes them healthier and more comfortable to be in. It brings down energy costs, creates sustainable jobs and lifts economic productivity. It also reduces peaks in electricity and gas demand, increases the stability of our energy system, and reduces emissions. More energy efficient homes are also more resilient to climate extremes, such as heatwaves.

...

All new Victorian homes will meet ‘7-Star’ building standards under changes to the National Construction Code planned to take effect from September 2022. This will save households on their energy bills while supporting skills and jobs in our construction sector.

Aligned with changes to the National Construction Code, the Victorian Government is also set to expand the range of low-emissions choices open to households by removing barriers to the installation of efficient electric hot water systems. This will help households maximise the benefits of investing in solar panels and support those who choose all-electric new homes.

...

We are committed to further strengthening energy performance standards for new commercial buildings and refurbishments as part of the National Construction Code. Changes to apply from 2025 will lead to reduced energy bills for businesses and help achieve our goal of improving average energy efficiency in commercial buildings.

³⁷ Available at: https://www.climatechange.vic.gov.au/_data/assets/pdf_file/0026/521297/Victorian-Climate-Change-Strategy.pdf

³⁸ Victoria’s Climate Change Strategy, 2021, PDF 17.

³⁹ Victoria’s Climate Change Strategy, 2021, PDF 21-22.

...

The Victorian Government is playing a strong leadership role through enhancements to the buildings it owns and leases across the state. Improving the energy efficiency of these buildings is reducing emissions and leading to lower energy costs for taxpayers. It is also supporting jobs and growth in Victoria's green building industry and helping improve the quality of our building stock.

From 2021, all new Victorian Government buildings will have embedded environmentally sustainable design with a minimum 5-Star energy performance rating to apply to new office buildings and tenancy fit-outs. This will be increased to 6-Star – the highest rating for office buildings, in 2025. Government leases will also preference higher rated buildings and those with Green Lease Schedules.

- b) in relation to emissions from natural gas, the strategy refers to the development of the Gas Substitution Roadmap, which has now been released, and led to Amendment VC250, introducing clause 53.03 into the planning schemes;⁴⁰
- c) in relation to action by local councils, the Vic CC Strategy states:⁴¹

Local climate action

Local councils and communities across Victoria are playing a crucial role in our collective response to climate change. We are committed to encouraging and supporting these efforts because we recognise that regions and municipalities across the state face different challenges, and can draw on their unique strengths when it comes to reducing emissions. By working together, we can empower communities to shape and take hold of the opportunities created by our transition to a net-zero emissions and climate resilient future.

Local councils

Victorian councils are delivering ambitious climate change policies and making a substantial contribution to reducing Victoria's emissions and supporting their local communities to respond and adapt to climate change.

More than 30 councils have committed to achieving net-zero emissions before 2050 across their local communities or for their own operations. To acknowledge these actions, and as a platform for local governments and the Victorian Government to work together towards a net-zero future, councils are submitting voluntary council pledges under the Climate Change Act 2017.

Every effort by councils to reduce emissions gets us closer to our goals, with council actions spanning every sector of economic activity, from energy and transport to land use and waste.

- d) in relation to adaptation to climate change, the Vic CC Strategy states:

We need to adapt

Climate change adaptation refers to action taken to reduce the adverse consequences of climate change or harness opportunities. Investing in climate change adaptation:

⁴⁰ Victoria's Climate Change Strategy, 2021, PDF 27.

⁴¹ Victoria's Climate Change Strategy, 2021, PDF 36.

- / Helps us to avoid potentially massive future costs by building resilience now into our environments, our economy and society
- / Protects plants, animals, and communities – particularly those most vulnerable to the consequences of climate extremes
- / Supports job creation in emerging and evolving industries.

e) specifically in relation to the built environment, and biodiversity, the Vic CC Strategy states:

Built environment and infrastructure

Our built environment and infrastructure will have an improved ability to avoid, withstand and recover from climate change impacts, while continuing to provide essential services and support community wellbeing.

...

Biodiversity, ecosystems and natural resources

Victoria's biodiverse ecosystems will be functional and resilient in the face of climate change. They will be actively managed and enjoyed, balancing sometimes competing values and uses.

59. In response to its obligation under s34 of the Vic CC Act, the Victorian government has published the *Built Environment Climate Change Adaptation Action Plan 2022-2026 (Adaptation Action Plan)*.⁴² The (then) Minister for Planning's foreword to the Adaptation Action Plan states:⁴³

Adapting our built environment to climate change is an investment in saving lives, reducing trauma and minimising economic damage from disasters and the associated recovery costs. Given the built environment's long life, it is important to factor adaptation into planning and management to reduce the need for upgrades and retrofits.

60. The Executive Summary also states (emphasis added):⁴⁴

The Built Environment system comprises our cities and towns along with supporting infrastructure and services, such as energy. Adapting our built environment to climate change is an investment in saving lives, reducing trauma and minimising economic damage from disasters and the associated recovery costs. Given the built environment's long life, it is important to factor adaptation into planning and management to reduce the need for upgrades and retrofits.

Achieving climate resilience across our cities and towns will require concerted action across multiple areas of government and the private sector.

...

⁴² Published by the (then) DELWP in 2022. Available here: https://www.planning.vic.gov.au/_data/assets/pdf_file/0034/635965/Built-Environment-Climate-Change-Adaptation-Action-Plan-2022-2026.pdf

⁴³ Adaptation Action Plan, PDF 3.

⁴⁴ Adaptation Action Plan, PDF 5.

This plan is the first of a series of AAPs for the Built Environment system. Subsequent plans will be prepared every 5 years on a path to a climate-resilient Victoria in 2050. This plan aligns with the guiding principles and policy objectives of the Act and of Victoria's Climate Change Strategy. It is consistent with the Victorian Government's policy in Plan Melbourne 2017–2050 to take action to adapt to climate change, reduce the likelihood and minimise the consequences of natural hazard events.

Over the next 5 years, the Built Environment system must strengthen and extend existing climate change responses; build adaptation capacity across government, the private sector and the community; and establish regulatory and other frameworks needed for long-term transformative action.

61. The Adaptation Action Plan:

- a) lists “update planning provisions to respond to climate change” as one of the actions to be taken;⁴⁵
- b) recognises that “To achieve effective adaptation, climate change needs to be considered in all decision making across urban functions”⁴⁶
- c) as one of its adaptation outcomes, in respect of new and existing buildings, states:⁴⁷

Outcomes sought

- *Plan and construct buildings with improved resilience to climate-related hazards expected during their design life*
 - *Existing residential and commercial buildings retrofitted to improve thermal performance and resilience to heatwaves, with capacity for further upgrades as conditions change. Some design solutions such as improving air tightness may also have other adaptation benefits, such as reduction of infiltration of bushfire smoke*
 - *Upgraded energy-efficient heating and cooling systems to reduce the cost of achieving thermal comfort as a result of climate change*
 - *Consider the value of embodied energy contained in existing and heritage buildings*
- d) recognises the essential role played by local councils, noting that they are: “integral in implementing planning system responses to climate change and natural hazards”;⁴⁸
 - e) in relation to gaps in existing standards states:⁴⁹

Built Environment gaps and opportunities

Planning standards, precinct design and infrastructure are needed to support cooling and greening objectives

⁴⁵ Adaptation Action Plan, PDF 6.

⁴⁶ Adaptation Action Plan, PDF 13.

⁴⁷ Adaptation Action Plan, PDF 13.

⁴⁸ Adaptation Action Plan, PDF 18.

⁴⁹ Adaptation Action Plan, PDF 29-30.

Increasing tree canopy for all cities and towns across Victoria can play an essential role in reducing urban heat exposure. The planning system can play a greater role by updating standards to retain and expand tree canopy. Increasing tree cover and parkland as part of new suburban design and delivery also helps respond to future heat risks.

Measures to support the irrigation of landscaped areas will help achieve more effective cooling. The availability of alternative water supply (such as recycled water)

to help keep planted areas green during summer, and the use of water-sensitive urban design to help recharge soil moisture, are important to support urban tree canopy objectives, especially as the climate warms and average rainfall declines.

Urban design features, such as using lighter coloured surfaces and building materials, are also important, particularly to reduce heat build-up and elevated night-time temperatures.

Improving building infrastructure

Projected temperature increases will require improvements in thermal performance of new and renovated buildings to help keep people safe as heatwaves become more frequent over time. The greatest impacts are likely to be experienced by residents of the 1.3 million Victorian houses built before 1991.

...

Planning will need to consider long-term rainfall decline

Some towns face water supply challenges, particularly during extended droughts. Town infrastructure and water-efficient design, coupled with water conservation and integrated water management practices (for example, greater use of stormwater and recycled water), will improve resilience and liveability.

Regulatory options, such as rainwater tank installation and higher efficiency standards for water fittings and appliances, support water conservation. They can be a cost-efficient way to conserve high-quality drinking water, improve long-term water security and reduce the need for restrictions during drought.

Water for greening during drought

Keeping gardens and trees alive and healthy contributes to cooling the urban environment. Alternative water supply to keep gardens and outdoor playing fields functional is also important for social wellbeing during droughts and in our increasingly warmer, drier summers.

62. The first governance action item in the Adaptation Action Plan is:⁵⁰

Update planning provisions to respond to climate change based on the most current advice from relevant natural resource and emergency management authorities.

63. The *Environmentally sustainable development of buildings and subdivision: A roadmap for Victoria's planning system (ESD Roadmap)* provides an overview of the state government's response to Action 80 in Plan Melbourne 2017-2050: "Review of planning and building systems to support environmentally sustainable development outcomes." Although the ESD Roadmap predated the

⁵⁰ Adaptation Action Plan, PDF 38.

Adaptation Action Plan, it remains the primary plan for how the state government intends to address built form responses to climate change through the planning system.

64. The Part A submissions outlined Council's submissions in response to the ESD Roadmap during its preparation,⁵¹ and importantly, noted that Council supports the intention on the part of the state government to introduce new and expanded particular provisions, as part of stage two of the ESD Roadmap.⁵² The Amendment has been prepared with that in mind, and the DDO73 in particular can readily be adapted into local schedules to the particular provisions if and when those foreshadowed changes are introduced.
65. The nature of the municipality of Melbourne, and the building typologies in the central city in particular, however, warrants an immediate planning system response. That is why Council has been working on the Amendment, and the precursor strategic work (and other ESD related amendments) for so long – delay in the implementation of more stringent ESD requirements will only make it harder to achieve the legislated emissions reductions targets at both state and federal level.

City of Melbourne

66. The steps that Council has taken over time to recognise and response to the climate change emergency were set out in the Part A submissions. Those steps have culminated in the strategic work that underpins the Amendment, and the Amendment itself.
67. Council also has a history of proactively seeking to improve ESD built form outcomes in the municipality, and has typically led the way in that regard. This Amendment is no different.
68. The steps that Council has taken over time include the following.
69. In 1996, introducing the requirement for environmental management plans for development in Docklands, which was one of the first planning requirements of its kind in Victoria.⁵³
70. In 2005, by Amendment C60 (Part 1A), introducing clause 22.19 (Sustainable Office Buildings) into the Scheme. At that time, the policy related only to office buildings, and addressed matters like greenhouse gas reductions, energy and water efficiency and waste management. It also referred to the Green Star tool, and the Australian Buildings

⁵¹ Document 10, Part A submissions, [53].

⁵² Document 10, Part A submissions, [92].

⁵³ Document 13, Glossop statement, [22].

Greenhouse Rating Scheme.⁵⁴ This was also a first of its kind for any municipality in Victoria.

71. In 2013, by Amendment C187, replacing clause 22.19 with a new clause 22.19 (Energy, Water and Waste Efficiency). The purpose of C187 was to expand the application of clause 22.19 to capture the types of land use and development that were expected to comprise the majority of new developments in the municipality, and to drive sustainability improvements for those development types.
72. Among other strategic documents, C187 was supported by:
 - a) the *Future Melbourne Community Plan* (adopted in 2008), which *inter alia* included a goal of net zero emissions by 2020;
 - b) the *Net Zero Emissions by 2020* report, adopted by Council in 2002 (updated 2008), which provided direction, and established emission reductions targets, directed to the City of Melbourne becoming a climate neutral City by 2020;
 - c) the *Energy Water and Waste Efficiency Planning Controls Review*, which, based on a review of planning and building requirements (and intersection), considered what targets and performance measures could be included in the Scheme to help achieve Council's net zero goals.
73. Importantly, the new clause 22.19 referred to an expanded set of external ratings tools to establish performance measures that new developments were expected to achieve.⁵⁵ The use of those tools under clause 22.19 was discretionary, and proponents were able to use alternative tools where it can be demonstrated that the same policy objectives are achieved.⁵⁶ This is similar to how the DDO73 is intended to operate (in the sense of there being flexibility in how the mandatory outcomes are achieved).
74. C187 was considered by a Panel which addressed a number of issues that are also relevant to the Amendment. These included:

⁵⁴ The tools were: Green Star 4 star; Green Star Water Calculator; Australian Buildings Greenhouse Rating Scheme 4.5 star, ABGR rating calculator;

⁵⁵ The ratings tool were: Sustainable Design Scorecard; Green Star – Office; Green Star – Retail; Green Star – Education; Green Star – Multi Unit Residential; NABERS Office Energy.

⁵⁶ Clause 22.19-5 stated: “*Applications for development may use alternative rating tools or assessment methods provided that equivalence of the development to the performance measures listed in the table can be demonstrated. Proposals that do not meet these performance measures may still meet the objectives of this policy.*”

- a) whether it was appropriate for ESD measures to be included in the Scheme;
- b) the tension between regulating ESD under the Scheme, and Building Code requirements;
- c) the use of a policy compared to the DDO; and
- d) the use of external ratings tools.

75. In relation to ESD being addressed in the Scheme, the Panel stated (emphasis added):⁵⁷

Regarding the built environment, a growing emphasis has evolved with respect to ESD and the desirable benefits of taking into account in designing new development, matters such as energy, water and waste efficiency. The policy frameworks under the planning system in both the SPPF and LPPF exhibit overwhelming support for addressing ESD within the land use and development planning process.

...

One of the benefits, the Panel considers, of the Amendment is the fact that the concept of ESD already exists in the planning scheme in the form of the current Clause 22.19 that covers office buildings. The existence of this local planning policy somewhat answers the question of whether ESD should be dealt with under the planning scheme. However, the question further evolves into: should ESD be expanded to cover a broader scope of built form and include more specific objectives for energy, water and waste efficiency to be demonstrably achieved through the design of development?

The Panel acknowledges that whilst the VPPs provides overarching goals for sustainability, there is a lack of detail regarding how the more quantifiable aspects of sustainability relating to energy and water conservation, sustainable building principles and the use of sustainability assessment tools should be implemented. The planning scheme already has in place mechanisms for dealing with sustainability matters across transport and activity centre planning, managing off site impacts, management of native vegetation and protection of coastal land. As argued by Council, the policy proposed in this Amendment gives content to Melbourne City Council's strategies regarding sustainable buildings and is another key piece in the 'sustainability' puzzle.

76. In relation to the interplay between ESD policy in the Scheme and the Building Code, the Panel stated:⁵⁸

Council in applying for Ministerial Authorisation specifically explained to the Minister for Planning in its letter dated 3 October 2011 that the Amendment has been designed to ensure future development achieves energy, water and waste efficiency within reasonable cost parameters experienced in current development practice. Council also reiterated that the Amendment has been designed to complement the BCA and address gaps where the BCA has limited or no application. The BCA assesses buildings in isolation and does not factor orientation, overshadowing, waste reduction strategies, water sensitive urban design etc... and looks to minimum standards.

With regards to the interplay between planning and building, the Panel was taken to a range of matters by Council including the history of past VCAT decisions concerning the implementation of ESD, Panel reports particularly relating to Melbourne C60 (which introduced the current version of

⁵⁷ Document 10e, *Melbourne C187* (PSA) [2012] PPV 132, pg 16-17, PDF 24-25.

⁵⁸ Document 10e, *Melbourne C187* (PSA) [2012] PPV 132, pg 17, PDF 25.

Clause 22.19) and Manningham C33 and the 2007 Sustainability Assessment in the Planning Process Investigation Report prepared by Hansen Partnership and Sustainable Built Environments (Hansen Report) and the 2011 MAV Guide on Planning for Sustainable Buildings (MAV Guide). All of these past decisions and reports have engaged in healthy debate about what role should planning have in implementing ESD and how any role should occur.

77. The Panel also considered the evolution in approach taken by the Victorian Civil and Administrative Tribunal to applying ESD requirements to permit applications after the introduction of clause 22.19 by C60, noting the shift over time towards acceptance of the appropriateness of the planning system addressing ESD matters much earlier in the development process that would be the case if left solely to the building approvals process.⁵⁹

The Panel stated:⁶⁰

For the Amendment, relevant lessons that the Panel has gleaned from the various Tribunal decisions include:

- *Planning regulation deals with ESD at a broad level and building regulation deals with ESD at a detailed level.*
- *Planning permit conditions should address sustainability outcomes at a broader design level rather than requiring specific sustainability solutions.*
- *ESD requirements in planning should be consistent with building regulations.*
- *ESD requirements are suited to being considered early in the design process rather than later at the building approval phase.*
- *ESD requirements are most appropriate when dealing with larger scale forms of development where cost impacts are less and sustainability benefits are more tangible.*

Ms Forsyth reinforced the concept of benefit from using a local planning policy mechanism for ESD in the planning scheme by referring to the idea that greater ESD gains will be made through larger developments, which in all cases would require a planning permit for construction.

78. The Panel further stated:⁶¹

The building system is suited to legislating for minimum national standards for a range of matters regarding building construction, including sustainability. The Panel notes that building regulations focus on the performance of the heating/cooling footprint and the services of a building, whereas the planning system is more suited to introducing new initiatives that encourage the pursuit of improved standards of sustainable built form design which are more ambitious than what is contained within the BCA, as well as a building within the context of its setting. Both the Hansen Report and the MAV Guide state that planning can often push the boundaries in policy development and can lead to new innovations and change including potential for change in the building system.

⁵⁹ Document 10e, *Melbourne C187* (PSA) [2012] PPV 132, pg 18-19, PDF 26-27.

⁶⁰ Document 10e, *Melbourne C187* (PSA) [2012] PPV 132, pg 20, PDF 28.

⁶¹ Document 10e, *Melbourne C187* (PSA) [2012] PPV 132, pg 21, PDF 29.

79. In relation to the use of the DDO, the Panel stated:⁶²

Regarding the DDO as an alternative planning tool, the Panel notes how the VPP Manual describes the DDO:

This overlay is principally intended to implement requirements based on a demonstrated need to control built form and the built environment. The built form outcome intended to be achieved must be clearly stated and the way in which the requirements imposed will achieve this clearly expressed. Where possible, performance based requirements should be used rather than prescriptive ones.

The DDO offers a useful alternative to using a local planning policy. It contains permit triggers and can specify the same policy and performance measure outcomes to that contained in the proposed Clause 22.19. However, the Panel considers that the key difference between using a local planning policy and a DDO is the issue relating to the 'area of coverage' of each tool. DDOs are useful tools that are normally applied to discrete geographical areas whereas the policy is considered across the municipality.

The policy is more aspirational in terms of establishing strategic directions or outcomes for land use and development whereas the DDO is an overlay tool focussing on buildings and works and derived from the strategic endeavours outlined under the policy frameworks of the planning scheme. In this sense, the Panel considers the choice of Council to apply a local planning policy to expand its coverage of ESD matters relating to energy, water and waste efficiency to be an appropriate approach because it addresses the need to provide greater strategic detail for applying ESD to development within the municipality for both individual proposals and broader urban renewal areas.

80. It is important to address these distinctions between the use of a policy and the DDO. As the Panel will be well aware, policies are not controls, and the purpose of a policy is to guide the exercise of the discretion given to a responsible authority by the applicable planning controls. That is to say, a policy cannot mandate built form outcomes.
81. It is the case that the Amendment now seeks to require relevant development typologies to achieve specific sustainability outcomes – and to do so by mandating outcomes by the application of the DDO across the municipality for the relevant development typologies. This is a clear point of distinction to the effect of clause 22.19 as considered by the C187 Panel.
82. It is also correct that the Amendment seeks to traverse ground that is also dealt with by the NCC in relation to specific detail of building performance. This is an intentional change in approach.
83. This further evolution in ESD outcomes is a necessary consequence of the threat faced by the climate emergency, as outlined in these submissions. As explained in the strategic work that informed the Amendment, including the Hansen Report, the existing regulatory position – which includes clause 22.19 and the NCC – is not achieving the improvements

⁶² Document 10e, *Melbourne C187* (PSA) [2012] PPV 132, pg 21, PDF 29.

that are needed. Compliance with a discretionary policy and the minimum standards in the NCC will not achieve net zero, and something more needs to be done. The planning system has a key role to play in driving sustainability improvements, as ESD principles need to be embedded at the earliest stages of a design. That is what the Amendment seeks to do through the introduction of more stringent, and mandatory (or quasi-mandatory) ESD controls.

84. In relation to the use of external ratings tools, the focus of debate in the C187 Panel was about which tools and standards should be referred to, rather than the appropriateness of referring to external tools in the policy. The Panel stated:⁶³

Debate over what are the best sustainability rating tools and/or the most appropriate benchmarks to apply within the performance measures tended to revolve primarily around energy efficiency and in particular how effective they would be in facilitating a reduction in greenhouse gas emissions. It was clear with the submission from Mr Talacko, that he has a passionate interest in this topic, to which the Panel appreciates his level of expertise and knowledge in the field of ESD. However, the issue for the Panel in considering his submissions is whether the extent of changes he sought to the policy detail was required and/or a necessary improvement to the policy content.

Like in many past Panel Hearings, when dealing with a matter where overall support is shown by parties but disagreement is evident over the detail of “how to” move forward with the final form of what is proposed, the end of the Hearing tends to elucidate potential points of compromise or positions of agreement often with such positions left to the adjudication of the Panel. This matter is no different.

85. The Panel did however make the following comments about the use of external ratings tools:⁶⁴

The Panel also considers that the notion of the policy relying on rating tools that, sit outside of the planning scheme and presents to Council a risk of having its planning scheme policy subject to control from outside influences, low. The Panel notes that the planning practice note refers to local planning policy being self-contained and should not rely on external documents or guidelines unless they are incorporated into the planning scheme. The Planning practice note states that the exception to this would be in:

....circumstances where the material in them is essential to support the LPP but cannot be drawn into the LPP itself.

Having considered this point, the Panel considers that the reliance on external rating tools for the policy’s performance measures is appropriate given the difficulty of incorporating these tools when they are the subject of regular review and the fact that similar rating tools are already referred to under the current version of Clause 22.19. External planning tools are also referenced in other areas of the planning scheme, the most recent of which is the reference under Clause 13.05-1 – Bushfire planning strategies and principles to the Australian Standard AS3959-2009 - Construction of Buildings in Bushfire-prone Areas (Standards Australia, 2009).

⁶³ Document 10e, *Melbourne C187* (PSA) [2012] PPV 132, pg 29-30, PDF 37-38.

⁶⁴ Document 10e, *Melbourne C187* (PSA) [2012] PPV 132, pg 32, PDF 40.

The rating tools are regularly and systematically reviewed and updated and are managed in a way that allows Council to be involved through consultation processes with input into the refinement or amendment of new versions of the tools. Council considers that the tools have been selected because they have wide application and use within the building and development industry. As such they share the following benefits:

- *Most of the tools are freely available;*
- *Most of the time, the assessment will be done by a professional who will already have the tools; and*
- *Council officers will produce a range of materials (and be available) to assist applicants who need access to and help with understanding the rating tools.*

The Panel considers that the use of external sustainability rating tools within the performance measures of the proposed policy are satisfactory and support implementation of the policy's objectives and requirements. Concerns over Council's policy potentially being "hijacked" by tools outside of Council's direct control appear unfounded when considering the governance and review processes for these tools.

86. Notwithstanding that the use of external tools will move from a policy into a control, these conclusions remain appropriate. The DDO73 will set minimum mandatory ESD outcomes, by reference to the specified Green Star, NABERS, NatHERS, BESS and GF Tool standards at this point in time. That is a known baseline. To the extent that future changes are made to those external tools, not only would there be consultative processes that Council and the industry will be aware of, but the standards are only likely to increase in stringency over time, as the climate crisis worsens, and as technology improves and expectations shift.
87. Taking Green Star as the example, with the change from Green Star Design and As Built to Green Star Buildings (which occurred between commencement of preparation of the Amendment, and exhibition), the star ratings (4/5/6 star) remained the same, but the credits required to achieve each rating became more stringent. If the same happens for future iterations of Green Star, the DDO73 would require achievement of whatever is the equivalent rating at the time. If there is a wholesale change to a ratings tool, Council would need to consider an update of the DDO73. The pace of and process for change of the external ratings tools is such that there remains a very low risk of the Scheme being 'hijacked' by tools outside Council's control— the governance frameworks for those tools are addressed in detail below.⁶⁵

⁶⁵ Council also notes that Green Star, NABERS, NatHERS and BESS, and also MUSIC and STORM for stormwater, are well understood tools that have now been in use by the industry for many years. They can be considered industry 'best practice' tools. See for example (in relation to Green Star, NatHERS, MUSIC and STORM) the comments of the Environmentally Efficient Design Advisory Committee: "Despite some limitations, like many forms of computer software, the Committee is satisfied these tools are recognised by the sustainable development industry as current 'best practice'. The local policy Amendments do not mandate these tools, so

88. In its concluding remarks, the Panel stated:⁶⁶

The Panel concludes that the Amendment is appropriate and satisfactory in dealing with improvements to energy, water and waste efficiency within the built environment in the City of Melbourne. Amendment C187 is an opportunity to progress how the Melbourne Planning Scheme can improve the implementation of much strategic work that Council has undertaken over the past decade. The Panel sees the Amendment as another step towards expanding how Council wishes to plan and manage new development both, in the form of individual buildings as well as urban renewal areas within the City to improve the efficient use of resources and reduction in wastage.

The Amendment expands the scope of the current Clause 22.19 from office buildings to retail, education and accommodation development and proposes to put in place a policy that allows sustainability to be factored into the design phase of new development at a much earlier stage. The Panel considers that this will empower the development community to avoid costly post-design changes and incorporate sustainability measures from the bottom up.

Much of the content of matters before the Panel related to details which, given the discretionary nature of policy of this kind is not considered significant enough to warrant not proceeding with this policy approach.

Council has the option of fine tuning the policy once experience of its application has been monitored and collated. Subject to some changes to improve the policy, the Panel considers that Amendment C187 should be adopted by Council.

89. The updated clause 22.19 was implemented into the Scheme on 4 April 2013 when C187 was gazetted.⁶⁷ A further decade on, the climate crisis has accelerated and the need to drive change in sustainability outcomes is much more acute. Council seeks the Panel's endorsement of the further evolution in the approach taken to sustainable development that is embodied by the Amendment.

90. Other later ESD related steps taken include:

- a) in 2014, the introduction of clause 22.23 (Stormwater management);⁶⁸
- b) the introduction of zone schedules that include specific ESD related controls, this includes:
 - Schedule 4 to the CCZ (Fishermans Bend Urban Renewal Area), which includes permit condition requirements that:

if alternatives are developed that achieve the same objectives they may also be used": Document 10f, *Environmentally Efficient Design Local Policies (AC)* [2014] PPV 40, pg 13.

⁶⁶ Document 10e, *Melbourne C187 (PSA)* [2012] PPV 132, pg 35, PDF 43.

⁶⁷ Clause 22.19 was translated to clause 15.01-2L-01 (Energy and Resource Efficiency) by C409 on 21 September 2022. The Amendment seeks to update clause 15.01-2L-01.

⁶⁸ Clause 22.23 was translated to clause 19.03-3L (Stormwater management (Water sensitive urban design)) by C409 on 21 September 2022. The Amendment also seeks to update clause 19.03-3L.

- certain new buildings and additions/alterations achieve minimum 4 or 5 star ratings under the Green Star Design and As Built tool;
- require ‘third pipe’ installations for recycled and rain water re-use, and the provision of rain water tanks for water re-use
- Schedule 6 to the SUZ (West Melbourne), which requires all car parking spaces to be retained as common property; and
- Schedules to the DDO for the Arden (DDO80, DDO81, DDO81, and DDO83), which include provisions directed to the adaptability of buildings and car parks.

91. In relation to how climate change is referred to in local policy in the Scheme as it stands today, clause 02.03-3 (Environmental risks and amenity) states as follows:

Climate change

The City is one of the most compact, dense and mixed use parts of the metropolitan area with the richest network of public transport services and generous open space reservations. These characteristics have intrinsic characteristics that offer significant potential to drive down energy use, to make the City robust against the predicted impacts of climate change, particularly water scarcity and heatwaves.

Climate change will deliver reduced rainfall, rising sea level, more extreme flooding, intense storms, and heatwaves. The built environment must be designed to moderate and provide protection from these impacts.

In planning for climate change, the Council will:

- *Encourage development that is resilient to heatwaves, water shortages, extreme storm events and sea level rise.*

92. It is appropriate for Council to draw the Panel’s attention to Amendment C432melb, which proposes to introduce a new Municipal Planning Strategy (**MPS**) and new local policies into the Scheme in order to implement the findings and directions of the City of Melbourne Draft City Spatial Plan. *Inter alia*, C432melb proposes to update clause 02.03-3 to read as follows:

Climate change

Climate change will deliver reduced rainfall, rising sea level, more extreme flooding, intense storms, and heatwaves. The built environment must be designed to moderate and provide protection from these impacts.

The urban forest is the aggregate of all community vegetation and green spaces that provide a variety of benefits including shading and cooling that will minimise the urban heat island effect and improve thermal comfort at street level for pedestrians.

Council aims to achieve a 40 per cent canopy cover by 2040.

Managing the impacts of urban inundation from storm surge, sea level rise and flash flooding will create opportunities to integrate water sensitive elements in the design of streets and open spaces and to rehabilitate our rivers and creeks. This is particularly important in the renewal precincts, including Arden, Macaulay and Fishermans Bend, as these areas were once wetlands and swamps.

In planning for climate change, the Council seeks to:

- *Reduce exposure to flood risk and sea level rise.*
- *Promote integrated water management practices such as water sensitive urban design to enhance flood management, increase biodiversity, assist in managing inundation, and provide soil moisture for healthy vegetation growth.*
- *Create a water sensitive municipality to increase resilience to flooding and drought, manage the impacts of inundation, and improve water and soil quality.*
- *Integrate water sensitive design in streets and open spaces and reclaim rivers and creeks.*
- *Encourage development, infrastructure and open space to be resilient to heatwaves, water shortages, extreme storm events and sea level rise.*
- *Facilitate cooler temperatures through the expansion of an urban forest in the public and private realms.*
- *Encourage high-thermal comfort buildings.*
- *Re-establish wetland areas as biodiversity corridors to support drainage and improved water quality.*

93. C432melb is currently on public exhibition, and is expected to be subject to a public hearing process in 2025. As can be seen, the matters that Council seeks to place greater focus on in planning for climate change through that amendment, are on all fours with the central subject matter and purpose of the Amendment.

94. In relation to ESD measures, the strategic work that supports the Amendment, including the GOCAP, GOSCAP and the Hansen Report, identify the existing gaps in the Scheme, and the need to implement more stringent ESD measures, to drive change and appropriately respond to the climate emergency. That is the fundamental purpose of the Amendment. The step that Council seeks to take is consistent with the broader policy intention and direction at Commonwealth and state level, as well as the overarching global agreement documented in the Paris Agreement.

Conclusion

95. The Amendment is not aspirational. It is essential. The nature of large multistorey buildings and extensions (in particular), and the fact that the central city is the obvious home for them, is such that they have a much larger than typical footprint in terms of emissions, water and energy use, and impact on the urban heat island effect. If the City of Melbourne, and the

State of Victoria, is to have any realistic chance of achieving ‘net zero’, it is critical that those building typologies substantially improve their environmentally sustainable design outcomes.

96. This is something that is within the control of Council as the planning authority, and an area where the planning system has a fundamental role to play.
97. The inclusion of ESD principles and targets in planning schemes has, for years now, been uncontroversial and accepted.
98. In the Environmentally Efficient Design Advisory Committee report from 2014, the Committee stated:⁶⁹

It is clear planning not only has role to play in achieving sustainability outcomes, it also has a clear obligation to do so.

There is already clear strategic justification for the development of greater sustainability focus within planning schemes, and whilst improvements can be made to planning system to provide a clearer and broader focus on sustainability, there is no need to ‘reinvent the wheel’. There are a range of more simple improvements which can be made to planning schemes to achieve this.

The significant issue which arises in considering how planning can best address sustainability is whether it is through a Statewide or a local approach. This is an issue that was raised at the Hearings and will be discussed below.

99. In relation to the issue of a statewide or local approach to ESD, the Committee stated:⁷⁰

The Committee is firmly of the view a Statewide approach would be the most effective way to achieve the greatest sustainability outcomes, providing greater coverage, consistency, fairness and simplicity.

The Committee acknowledges the Amendment Councils have developed these policies in response to a lack of a Statewide approach and are to be commended for their vision and commitment. The Committee is concerned, however, that the adoption of varying approaches between municipalities could lead to confusion and inequity.

In the interim, until such time as a more cogent approach is developed at the Statewide level, the Committee accepts there is a case for municipalities to include a local policy which provides the strategic justification for the consideration of sustainability outcomes for defined developments.

The Committee also believes that even if a Statewide policy is introduced, local policies may still be appropriate where municipalities seek to ‘raise the bar higher’ either in specific locations, or where the community has higher sustainability expectations.

The Committee considers there is merit in including a sunset clause on any local policy introduced that would enable the review of these policies in light of any Statewide approach introduced. If these policies duplicate the Statewide approach it would be appropriate for these local policies to be deleted, however if the local policies go further than the Statewide approach, the policies could be refined to delete areas of duplication and focus solely on those elements which seek to ‘raise the bar’ at the local level.

⁶⁹ Document 10f, *Environmentally Efficient Design Local Policies (AC)* [2014] PPV 40, pg 49, PDF 58.

⁷⁰ Document 10f, *Environmentally Efficient Design Local Policies (AC)* [2014] PPV 40, pg 50-51, PDF 59-60.

100. A decade on, while the state government has expressed its intention to introduce new and updated ESD related particular provisions (by contrast to policy) as yet there is no specific detail or timeframe for the introduction of those provisions. In the absence of statewide particular provisions, Council considers it essential for the Amendment to progress as soon as possible in order to advance the net zero goal. As noted in the Part A submissions, the controls proposed here are readily adaptable into local adjustments to any future particular provisions.
101. What is proposed by the Amendment is not a step-change. Rather, the Amendment proposes a necessary further evolution of ESD targets, to more quickly drive improved ESD outcomes in the municipality, as part of the response to the rapidly increasing impacts of climate change.

THEMATIC RESPONSE TO SUBMISSIONS AND MATTERS RAISED BY THE PANEL

Introductory

102. Seventy three submissions were made on the Amendment during exhibition. Of those:
- a) 37 explicitly supported the Amendment;
 - b) 7 were not supportive;
 - c) 29 did not explicitly say whether they supported the Amendment; and
 - d) only three submitters have asked to be heard by the Panel.
103. The Panel can well infer from the fact that key industry groups and major property developers are not participating in the hearing that they do not have material concerns about the Amendment.
104. That is not surprising. The Amendment as a necessary evolution of the existing ESD controls; and that the evolution of ESD standards is part of a “business as usual” expectation for the industry – as technology, and knowledge about building performance and sustainability improves, so do the expectations of prospective occupants of buildings.
105. It is also consistent with the fact that the NCC, and tools like Green Star, are continually being reassessed, leading to increases in minimum requirements and standards. The evolution of ESD controls in the Scheme is no different. As the planning authority, and in

the context of the climate emergency, it would be remiss of Council not to also seek to improve the sustainability performance of buildings in the municipality.

106. Council has closely considered all submissions to the Amendment, and instructed its experts to consider and address any issues arising from submissions that are relevant to their area of expertise. Where appropriate to do so, Council has made drafting changes in the ordinance to respond to submissions – these changes are highlighted yellow in the Day 1 Version.
107. The following sections provide a summary response from Council to the key themes arising from submissions.

Relevance of the strategic background work

108. Some submissions suggested that the strategic work that supports the Amendment is now out of date and does not provide adequate strategic justification for the Amendment.
109. Council acknowledges that the delays in obtaining authorisation to prepare and exhibit the Amendment in the form that is before the Panel for consideration means that a number of the background reports that support the Amendment were prepared a number of years ago now.
110. That does not, however, translate into a conclusion that the findings in those reports is out of date. To the extent that there have been further developments, the case for action has become more urgent, there is an even greater policy basis for the Amendment, there are additional examples of aspects of the Amendment being adopted in one form or another in planning schemes, and the subsequent work has verified the earlier work in all material respects. Accordingly, the key strategic documents, including specifically the GOCAP, GOCSAP, the Hansen Report, and the earlier related strategic reports prepared by or for Council, remain apposite and relevant to the Amendment.
111. In relation to the supporting case study feasibility work that was undertaken in 2020⁷¹ and 2022⁷² by HillPDA, Council acknowledges that the ‘base case’ for feasibility testing has changed since that work was undertaken. This is why Council engaged SGS to undertake additional feasibility work, by reference to what is now the ‘base case’ against which the Amendment should be considered. Importantly, however, as is part of the theme for the

⁷¹ HillPDA, *Green Our City Action Plan – Draft Planning Requirements, Economic Feasibility Testing*, November 2020.

⁷² HillPDA, *Green Our City Action Plan – Draft Planning Requirements, 5 Additional Sites*, February 2022.

ESD response to climate change, the ‘base case’ standards have only increased in terms of ESD expectations. That is a trend that will, and must, continue, if we are to have any hope of limiting the detrimental impacts of climate change. The conclusions of the SGS work are addressed below.

NCC standards

112. Some submissions raised issue with whether the Amendment:

- a) should go further than the NCC standards; or
- b) would lead to inconsistency with the NCC standards.

113. In relation to these matters, and as noted in the Part A submissions, and above, Council’s response in summary is:

- a) The NCC sets only minimum building standards. Complying with those minimum standards is not, in Council’s view, sufficient to drive the built form performance improvements necessary to respond to the climate emergency. Accordingly, through the Amendment, Council is intentionally seeking to require the relevant development typologies to achieve higher ESD standards than the minimum NCC requirements.
- b) As demonstrated by Attachment 3 to the Part A submissions, while it is clearly the case that the Amendment seeks improved outcomes over those of the NCC, there is no inconsistency with the NCC standards. That is to say that where a development meets the DDO73 requirements and standards, it will also satisfy the relevant NCC standards (where there is an overlap in subject matter). There is also nothing in the NCC, or the relevant state legislation, that prevents a planning authority from requiring buildings to achieve performance standards that exceed the NCC requirements.

Use of DDO rather than a policy

114. Some submissions challenged the application of a municipal wide DDO to address ESD matters. The Panel asked questions of Mr Glossop about this issue.

115. Council does not shy away from the fact that what it is proposing in the DDO73, by specifying, in a control, mandatory sustainability outcomes measured through the lens of the external ratings tools, is a different approach than has been taken to date, through the use of an ESD policy.

116. But the change is a necessary one, as the policy alone, absent a specific permit trigger, has not achieved the change that is required to address the climate emergency.⁷³
117. As above, Council notes that the State is also contemplating controls rather than continuation of a policy approach – in that regard, the ESD Roadmap indicates that the State is investigating new and amended particular provisions. Council wants to be clear that it supports the use of a particular provision, with local variation in a schedule – and it has supported that approach since the early stage of preparation of the Amendment.⁷⁴ If that is the approach ultimately adopted by the State, the DDO73 can be readily adapted into a local schedule or schedules.
118. But there is no publicly available information about the content or timing of a state-wide approach, and continuing to wait is just not an option. The Amendment is needed now. Further the Panel’s recommendations in relation to the approach taken by the City of Melbourne to this amendment, will no doubt be helpful and informative to the State in relation to the approach it is ultimately takes to drafting the foreshadowed particular provisions. No doubt, the commencement of the formal use of the Green Factor Tool will also be the first step in the entrenchment of that tool (as an equivalent) in the planning scheme more broadly. To that end, Council re-enforces the critical role of the Panel as an institution playing a role in our collective climate future.
119. In terms of the appropriateness of using the DDO, Council refers to Mr Glossop’s evidence in support of the use of the tool,⁷⁵ and the Hansen Report, which states:⁷⁶

DDOs are not generally applied across a whole municipality, but rather are applied to specific areas where, for example, built form parameters relating to building heights and setbacks have been identified through a structure planning process.

While it is acknowledged that the use of a DDO across the municipality is unusual and would not generally be the preferred approach, there are a number of considerations which result in this recommendation representing the best ‘fit’ of the current planning tools. These considerations include:

- The intent to include a number of mandatory standards as part of the amendment. The Design and Development Overlay is the most appropriate tool for the expression of mandatory built form requirements.*

⁷³ See, GOCSAP, Appendix B, from PDF 166, and in particular, Table 1.3, PDF 173.

⁷⁴ For example, see the draft particular provision and local schedule included as Attachment 3 to Item 6.5 of the agenda of the Future Melbourne Committee meeting of 15 September 2020.

⁷⁵ Document 13, Glossop statement, [46]-[49], PDF 16-17.

⁷⁶ Hansen Report, PDF 32.

- *The intent to apply the standards across the full spatial extent of the municipality which meant other options, such as utilising zone schedules was not available.*
- *The intent to apply the standards across a very broad range of development typologies/ land uses.*

As a result of the above, and in particular the first two dot points, the choice of controls is essentially narrowed to the tool proposed. Planning practice in the State has long endorsed the principle of the 'best fit' tool, of which this is a clear example. Planning practice also generally seeks to contain explicit measures (such as the numerical measurements included in many of the Standards), in a schedule to a zone or overlay rather than in policy.

120. There is no other tool in the VPPs that can achieve what is sought by the DDO73. Furthermore, the schedule is faithful to what is contemplated by the head clause. The requirements in DDO73 are clearly “requirements relating to the design or built form of new development”, and hence fall squarely within the sorts of requirements contemplated by the head clause.
121. To the extent that the challenge to the use of a municipal wide DDO centres around the question of administrative burden for permit applicants and the responsible authority, the detail of the DDO73 provides the nuance in application, as while it will trigger a permit for a fairly broad range of development typologies, there is cascading application of the various standards, which will not apply to all development typologies. It is the larger development typologies that will need to provide the most documentation in response to the DDO73, but those typologies are already complex to document. In fact, the certainty given by the DDO73 in terms of what ratings must be achieved, should limit the administrative burden for both permit applicants and the responsible authority.

DDO head clause permit trigger

122. It is first important to set out how the DDO head clause sets up the permit trigger, and how variations to requirements in a schedule to the DDO can be allowed.
123. Clause 43.02-2 sets out the permit requirement, relevantly:

A permit is required to:

Construct a building or construct or carry out works.

124. That clause also then provides:

Buildings and works must be constructed in accordance with any requirements in a schedule to this overlay.

125. Finally, the clause allows some variation from requirements in a schedule, unless prohibited by the schedule itself:

A permit may be granted to construct a building or construct or carry out works which are not in accordance with any requirement in a schedule to this overlay, unless the schedule specifies otherwise.

126. It follows that there is only one permit ‘trigger’, and in order for a permit to be granted the development must meet the requirements in the schedule, unless a variation from any requirement is sought and allowed by the schedule. As such, it is not that the variation of a schedule requirement separately triggers a permit, rather, that the variation sought would be considered as part of the permit application, and form part of the permit granted (see *Shadda*, quoted below).
127. It is also the case that it is not necessary to specify in a DDO schedule which requirements can be varied (because that is the default position under the head clause), rather it is only necessary to specify which requirements cannot be varied.
128. In *Shadda Abercrombie v Salter Architects and Minister for Planning*,⁷⁷ the Court of Appeal relevantly stated:⁷⁸

The verb ‘should’ is to be contrasted with the use of the verb ‘must’ within the very words of clause 43.02–2 itself, which initially provides that ‘buildings and works must be constructed in accordance with any requirements in the schedule to this overlay’; and to the use of the verb ‘must’ elsewhere in the Schedule such as in clause 3 of the Schedule which governs requirements for an application. Clause 3 states:

An application to construct a building or construct or carry out any works must be accompanied by the following information as appropriate: ...

The verb ‘must’ is also used elsewhere in the Planning Scheme. Indeed, its use is the fulcrum of the use controls implemented by reference to zones under clause 31 and following of the VPPs.

When Schedule 1 is read as a whole, and the language used is considered in the context of the DDO provisions as a whole, together with the Planning Scheme provisions as a whole, the inescapable conclusion is that the use of the verb ‘should’ is deliberate.

In turn, it follows that the ‘requirements’ set out in the Schedule are not absolute requirements. The sense in which they are conditional is obvious. They are subject to the discretion granted by clause 43.02–2 to grant a permit for the construction of a building or the carrying out of works which are not in accordance with ‘any requirement in a schedule to this overlay’. The requirements set out in the Schedule are provisional in the way contemplated by clause 43.02–2.

In turn, the use of the word ‘should’ means that it cannot be said that the Schedule ‘specifies otherwise’ than is provided for by clause 43.02–2. It does not in terms state mandatory requirements.

129. It follows, in Council’s submission, that there is no need to include introductory words to explain the operation of requirements expressed with a ‘should’ in the DDO73 tables

⁷⁷ [2018] VSCA 74.

⁷⁸ [2018] VSCA 74, [56]-[60].

(specifically Table 3). That said, if the Panel thinks it is necessary or desirable to provide more explicit direction for some of the tables in the DDO73, Council is happy to provide drafting to that end.

130. In relation to Tables 1 and 2, which provide “preferred” standards, the chapeau to both Tables provides:

Development should meet the preferred standard in Table 1 to this schedule.

If the preferred standard is not met, the minimum (mandatory) standard must be met.

131. These words of application make clear that the preferred standards are discretionary (ie ‘should’ be met).

Use of external tools

132. Some submissions challenged the use of ratings tools external to the Scheme. This issue was taken up by the Panel in questions of experts.
133. Questions focussed on whether it is appropriate for a Scheme to refer to and rely on tools that sit outside the Scheme, particularly where those tools can be changed by their authors/operators, without the sort of public process that a planning scheme amendment goes through.
134. It is fair to say that the reference to web-based tools in the planning scheme is now well entrenched. However, while the use of such tools to set mandatory benchmarks does have a precedent in the Fishermans Bend Urban Renewal Area, questions have arisen as to whether the approach taken in DDO73 is consistent with the Practitioners’ Guide.
135. The first point to note is that the ratings tools that are referenced in the DDO73 (setting aside the GF Tool, which is separately addressed below) are all tools that have been in use by the development industry and decision makers for a long time. They are mature, sophisticated, well understood, and robust tools that are used as a matter of course for a variety of projects of many different types, sizes and purposes. They have also been developed, refined and improved over time with the benefit of feedback from users and the industry. An extraordinary amount of work and experience sits behind each of the tools as they are today. It would be impossible for any council to replicate, in any meaningful way, an ESD ratings tool equivalent to any of Green Star, NABERS, NatHERS or BESS, in order to codify what those tools do directly in a planning scheme (or an Incorporated Document). It may be conceptually desirable for a planning scheme to be wholly self-contained, but

when it comes to sustainability performance standards and metrics, that would be an impossible task. There is also no need to do so, where there are such well-regarded and outcome specific tools available, that are already in use by the development industry in any event – and in that regard Council notes Mr Ritter’s evidence about the tools constituting industry best practice for ESD.

136. The rationale for the use of external ratings tools is addressed in the Hansen Report as follows:⁷⁹

The standards contained in the GOCSAP (2019) report relied heavily on the use of external rating tools. The standards include references to Green Star, BESS, NatHERS, NABERS, and the City of Melbourne Green Factor Tool. The rationale for the use of these tools as articulated in that report pointed to independent certifications as providing consistent and understood methodologies, which are underpinned by strong governance and stakeholder engagement processes to be used, reducing the inconsistencies in interpretation of policy. It also identified that the use of the tools makes implementation easier, and reduced the need to include complex or technical content within the scheme. All tools are currently used by the development industry and are developed in consultation with the industry, ensuring they reflect existing industry capacity. While the use of external tools endorsed by previous Panels did not involve mandatory use, it is noted that the mandatory use of the tools is caveated by wording within the schedule that allows the use of alternate tools consistent “provided it is equivalent to the identified tool and results in comparable outcomes.” Current policy applied to Fishermans Bend also establishes a precedent for the mandatory application of a Green Star requirement.

Green Star and BESS were selected as the ‘overall’ ratings tools as these are the most well-known, widely used and respected tools for broad sustainability assessments and are the tools which cover the full scope of the themes. The approach adopted by the GOCSAP (2019) report to require more stringent or complex conditions in association with larger developments and less onerous standards or conditions on smaller developments was considered logical. Reflecting this in the application of Green Star to larger development and BESS to small to medium scale development was also considered logical and reflects established practice.

137. The GOCSAP identified the reasons for nominating the chosen ratings tools, as follows:⁸⁰

The use of independent certifications as sustainability benchmarks is well established in the planning scheme. There are many benefits to embedding an independent third-party sustainability certification, such as Green Star, into technical standards. These include:

- *Ability to verify outcomes and establish governance processes for outcomes at the as-built stage*
- *Ability for applicants to capture the value of sustainability using schemes that are well understood by the market*
- *Provision of an agreed and consistent methodology for setting targets and measuring progress towards benchmarks*

⁷⁹ Hansen Report, PDF 34.

⁸⁰ GOCSAP, PDF 62.

- *Governance processes that have robust and inclusive industry engagement to confirm technical feasibility and market acceptance*
- *Governance processes to embed regular updates to benchmarks and requirements*
- *Assessment processes resourced by experienced professionals to undertake technical assessment.*

To gain the benefits above, it is critical that the full certification pathway is used, rather than requiring only demonstration of equivalent performance at planning application stage.

138. In relation to Green Star:⁸¹

We have nominated Green Star as the primary sustainability certification for large developments for the following reasons:

- *Established use in the Melbourne Planning Scheme (through Local Policy 22.19 and Fishermans Bend Local Policy 22.27)*
- *Long track record and strong governance ensures longevity*
- *Market capability for implementation and compliance*
- *Well-understood market value*
- *Broad scope, aligned with evolving industry best practice and with City of Melbourne strategies as they relate to development and the built environment, including the transition to zero carbon buildings and precincts*
- *Integration with other more specific tools including NABERS and NatHERS.*

139. In relation to BESS:⁸²

We have nominated the Built Environment Sustainability Scorecard (BESS) as the certification tool for small ($\leq 5000\text{sqm}$) developments. We have nominated BESS due to its:

- *Established use for smaller scale development, with an enduring system of governance*
- *Tool is updated to align with evolving standards and industry practice*
- *Market capability for implementation and compliance*
- *Familiarity to local government authorities*
- *Relatively simple tool compared to Green Star Design and As-Built, meaning it is not onerous for smaller developments.*

140. In relation to NatHERS:⁸³

We have nominated the Nationwide House Energy Rating Scheme (NatHERS) as the tool to benchmark energy performance for all residential developments due to its:

- *Established use and long track record (through the National Construction Code)*
- *Strong governance to ensure longevity*
- *Ability to drive passive design outcomes within residential developments.*

⁸¹ GOCSAP, PDF 63.

⁸² GOCSAP, PDF 65.

⁸³ GOCSAP, PDF 65.

141. In relation to NABERS:

We have nominated NABERS as the tool to assess the energy and water performance of large, new, non-residential developments and large non-residential building alterations, due to its:

- *Market recognition and therefore value – NABERS Energy is a requirement under Commercial Building Disclosure regulations for the sale, lease or sublease of offices larger than 1,000 sqm.*
- *Established use and long track record*
- *Strong governance to ensure longevity*
- *Availability of benchmarking data to directly compare buildings.*

142. Second, it would be incorrect to assume that changes are, or could be, made to those tools on a whim, or without proper process and notice to and participation by relevant industry practitioners and decision makers. That is simply not the case. Each of the tools has a comprehensive governance regime in place with participation by key industry stakeholders.

143. In the case of NatHERS, that tool is administered by the Commonwealth government, on behalf of all states and territories, working with the ABCB. There are a number of entities responsible for or involved in the administration and improvement of NatHERS, including:

- a) the Energy Minister's Meeting, which is a Ministerial forum for the Commonwealth government, state and territory governments and the NZ government, which pursues energy reforms – and has final decision-making power over NatHERS;
- b) of a NatHERS Steering Committee, made up of representatives from all Australian governments, and provides strategic advice and makes decisions about NatHERS;
- c) a NatHERS Administrator;
- d) a Technical Advisory Committee (**TAC**), an expert body comprised of 34 members from a range of industry bodies and groups, including:⁸⁴
 - Australian Institute of Architects;
 - Australian Sustainable Built Environment Council;
 - BASIX – NSW Government, Department of Planning and Environment;
 - City of Sydney;

⁸⁴

See: <https://www.nathers.gov.au/sites/default/files/2023-08/TAC%20memberships%202023-25.pdf>

- CSIRO;
 - Energy Efficiency Council;
 - Green Building Council of Australia;
 - Housing Industry Association;
 - Property Council of Australia;
 - Scorecard – Vic Government, Department of Energy, Environment and Climate Action
 - RMIT University;
 - any many others;
- e) a Stakeholder Consultative Group (**SCG**), which provides stakeholder and industry feedback on the development, implementation and continuous improvement of the tool. The SCG currently comprises 44 members, including::
- most of the members of the TAC:
 - ACT Government – Environment, Planning and Sustainable development;
 - Master Builders Australia;
 - NSW Government – Department of Planning, Industry and Environment;
 - QLD Government – Department of Energy and Public Works;
 - SA Government – Department for Energy and Mining;
 - Sustainability Victoria;
 - Vic Government – Department of Energy, Environment and Climate Action;
 - and
 - WA Government – Department of Mines, Industry Regulation and Safety.

144. NatHERS is underpinned by a series of inter-governmental agreements going back to 1993, is integral to the NCC itself, and is supported by a detailed governance framework.⁸⁵

⁸⁵ See: <https://www.nathers.gov.au/sites/default/files/2022-09/Admin%20Governance%20Arrangements-update%202021.pdf>

145. In the case of Green Star, there is a similarly detailed and rigorous governance framework in place, to support the legitimacy of and improvement in that tool.
146. The tool is managed and operated by the Green Building Council of Australia, which is advised by:
- a) the Green Star Advisory Committee, comprised of members from industry and government, operates under a published charter,⁸⁶ which provides that the responsibilities of the committee include:
 - *oversee the implementation of GBCA's strategy relating to Green Star*
 - *oversee the development of Green Star rating tools and certification processes*
 - *ensure mechanisms are in place to receive industry feedback on Green Star*
 - *receive and make recommendations to address feedback from industry on the Green Star rating tools*
 - *ensure a balance is maintained between best practice benchmarks, feasibility and technical rigour in the development of Green Star rating tools*
 - *establish and oversee the work of advisory groups to the committee including an industry advisory group and a technical advisory group*
 - *ensure that GBCA policies and procedures in relation to Green Star are being regularly reviewed and are followed*
 - *such other matters as may be referred by the GBCA board.*
 - b) an Industry Advisory Group, which provides insight into industry activity and trends and makes recommendations to increase the adoption of Green Star. The Group operates under Terms of Reference, which set out the following responsibilities:
 - *Ensuring there is broad engagement across the relevant sectors of the built environment in Green Star development activities;*
 - *Assisting with the development of strategies to improve the uptake of Green Star;*
 - *Providing advice on how to communicate the value of Green Star;*
 - *Providing recommendations to improve the useability of Green Star;*
 - *Ensuring a balance is maintained between best practice benchmarks and feasibility in the development of Green Star;*
 - *Assisting in working with domestic and global rating tools and reporting schemes to achieve alignment and common goals;*

⁸⁶ See: <https://gbca-web.s3.amazonaws.com/media/documents/green-star-advisory-committee-charter.pdf>

- *Providing feedback on proposals with a focus on the market acceptance of such proposals.*
- c) a Technical Advisory Group, responsible for developing technical guidance and direction for the ratings tool, including assessing and reporting stakeholder comments;⁸⁷
- d) a Responsible Products Advisory Group, which advises on matters relating to product and circular economy;⁸⁸ and
- e) a series of expert reference panels that are made up of a range of industry professionals and government representations from different sectors.⁸⁹ The panels cover the following areas:
 - building performance;
 - sustainable buildings;
 - new fit outs
 - sustainable precincts;
 - energy and carbon;
 - people and wellbeing;
 - resilience
 - nature and biodiversity;
 - responsible products.

147. NABERS is a national government program administered by the NSW Government (the National Administrator).

148. The operation of NABERS is overseen by a national Steering Committee comprised of all state and territory representatives, and the Commonwealth Government.

⁸⁷ It also operates under Terms of Reference, see: <https://gbca-web.s3.amazonaws.com/media/documents/terms-of-reference-tag-2021.pdf>

⁸⁸ It also operates under Terms of Reference, see: <https://gbca-web.s3.amazonaws.com/media/documents/terms-of-reference--homes-advisory-group-2020.pdf>

⁸⁹ See: <https://new.gbca.org.au/green-star/governance/>

149. The NABERS Steering Committee includes members from bodies representing a range of industry group and government representative. This includes, among others:
- a) Australian Industry Group;
 - b) Australian Property Institute;
 - c) Australian Sustainable Built Environment Council;
 - d) Council of Capital City Lord Mayors;
 - e) Energy Efficiency Council;
 - f) Green Building Council of Australia;
 - g) Property Council of Australia;
 - h) Royal Australian Institute of Architects.
150. BESS is owned by the Municipal Association of Victoria (**MAV**). The Council Alliance for a Sustainable Built Environment (**CASBE**) operates BESS on behalf of its member councils. CASBE staff are employed by MAV.
151. BESS is a CASBE asset under the Sustainable Design Assessment in the Planning Process (**SDAPP**) framework, governed by the SDAPP Governance Board and advised by the SDAPP Technical Reference Panel. The SDAPP Governance Board is responsible for the strategic direction of BESS, including setting, reviewing and updating sustainability performance objectives within the tool responding to changes in Victorian and specific local planning provisions overseeing enhancements (upgrades) and regular maintenance activities.
152. The Panel should not be concerned that reference to external ratings tools in the DDO73 poses any real risk of the operation of the Scheme being hijacked by changes to those tools. The Panel can be assured that there are robust governance frameworks in place for all of the tools, which include advisory bodies made up of industry and government stakeholders. Any changes to the tools will be forecast to stakeholders well in advance of the changes being made.
153. Further, if it is the case that a change is made that fundamentally alters the operation of one of the nominated tools, Council as planning authority will need to consider whether a consequential change needs to be made to the DDO73. As above, any such fundamental changes will be known well in advance, and Council will have the time to take any necessary steps through the usual processes.

154. In relation to the comments in the Practitioners' Guide about the use of webtools, Council first notes Mr Glossop's assessment of what is intended by that comment, and how the external tools are used in the DDO73 – Council agrees with Mr Glossop's interpretation.⁹⁰
155. Second, the Minister for Planning has expressly adopted reference to compliance with and certification to Green Star in the CCZ4.
156. The use of that tool was assessed by the Fishermans Bend Planning Review Panel and Advisory Committee. The Minister explicitly advocated in favour of the use of Green Star (to 4 star). Council and other parties advocated in favour of a 5 star Green Star rating.
157. The Advisory Committee stated:⁹¹

Under the Green Star system, 4 Stars represents best practice, 5 Stars represents Australian excellence and 6 Stars represents world leadership. The Review Panel considers that if the Vision of a world leading urban renewal project that sets new benchmarks for sustainability is to be achieved, the planning controls must start with a standard for buildings that represents at least Australian excellence – that is, 5 Stars, and a standard for communities that represents world leadership – that is, 6 Stars. Other urban renewal projects in Australia have committed to a 6 Star community certification, including Barangaroo.

The Amendment introduces mandatory Star rating requirements in Fishermans Bend for the first time. Notwithstanding this, the Review Panel considers that a 4 Star buildings rating is too low a starting point. It is lower than the current policy settings in both schemes, and represents a 'minimal' standard according to the evidence of both Professor Bates (for the Minister) and Mr Williamson. The Review Panel accepts Mr Williamson's evidence (and the submissions of the Property Council and the Green building Council) that there is growing market acceptance of 5 Stars. It also notes that the Net Zero Carbon Strategy recognises that 4 Star standards for buildings "will need to be rapidly ramped up to avoid locking in poor building performance ...".

Constant ESD improvements will be required to ensure that Fishermans Bend remains a world leading example of sustainable urban renewal, and the government's decision making obligations under the Planning and Environment Act and the Climate Change Act are met. ESD standards will need to be monitored, reviewed and improved as the urban renewal of Fishermans Bend progresses.

158. This is express support and precedent for the use of external ratings tool as mandatory requirements in a planning control, rather than a policy.
159. The way the CCZ4 addresses the mandatory requirements is by mandating the inclusion of Green Star ratings on permits which require :
 - a) registration to seek a minimum of Green Star rating;

⁹⁰ Document 13, Glossop statement, [63]-[65].

⁹¹ Document 10g, *Fishermans Bend Planning Review Panel (AC)* 2018 PPV 71, PDF 158.

- b) within 12 months of occupation, certification submitted that demonstrates achievement of the minimum rating.
160. There is no practical difference between that mechanism, and the way it is approached in the DDO73, in terms of what is stated in the Practitioners' Guide. In the CCZ4, the Scheme locks in a mandatory requirement to achieve certification to a minimum Green Star rating. That is exactly the same outcome as would result from the DDO73. That is not inconsistent with the commentary in the Practitioners' Guide about the use of webtools.
161. If the Panel does not agree on that point of consistency, then given that the CCZ4 expressly uses a webtool in the way proposed by the DDO73 – which was supported by the Minister and the Advisory Committee – then 'compliance' with that statement in the Practitioner's Guide needs to be look at in a different way. The Scheme already does what the DDO73 proposes, so clearly the Minister considers that the use of external ratings tools, and mandatory compliance with an external ratings tool, is acceptable and appropriate.

Equivalent tools

162. The DDO73 (clause 2.3) allows a permit applicant to *“use an alternative tool, provided it is demonstrated to be equivalent to the identified tool and results in equivalent or better outcomes, to the satisfaction of the responsible authority.”*
163. The Panel posited a question to Mr Glossop as to how the Tribunal might resolve a dispute about whether an alternative tool may provide an at least equivalent outcome to the mandatory 50% BESS score required for certain typologies of development by Table 1 of the DDO73.
164. The answer to this question is as Mr Glossop said – the Tribunal would make a decision based on the evidence before it. That is orthodox practice for the Tribunal. It is routinely faced with the need to weigh competing evidence in the formation of its views.
165. To extend the hypothetical, what would likely happen is that a permit applicant would provide an evidence base that purported to establish that the 50% BESS requirement was satisfied using a different tool. To be satisfactory, the evidence base would need to show how each of the components addressed by BESS was achieved by the proposal, using that alternative tool.
166. If Council was not satisfied by that evidence base, the permit applicant could seek review by the Tribunal. A sensible applicant for review would call expert evidence from an ESD

consultant addressing exactly how the equivalent of the 50% BESS score was achieved by the use of the alternative tool. Likewise, one would expect the responsible authority to call expert evidence of its own.

167. The Tribunal would hear the evidence, tested through cross examination, and make its decision as to whether the score achieved using the alternative tool was at least equivalent to a 50% BESS score.
168. That is no different to the decisions that the Tribunal makes on a daily basis, with the benefit of technical evidence.
169. The Panel has raised a good point in relation to the “*requirement to meet the standard*” in the chapeau to each of Tables 1 and 2, which refer to certification to achieve the specified ratings tools.
170. There are a number of other tools in an international context which may fall into the category of “equivalent tools” to Green Star. For example, Living Building Challenge (LBC, International Living Future Institute) is a comprehensive sustainability rating scheme for buildings, and it is possible for buildings rated under LBC to achieve certification in Australia (Burwood Brickworks is an example). Further, BREEAM (UK) and LEED (USA) are potentially available (for example The Seafarers development on the Yarra is seeking LEED certification).
171. If an applicant put forward one of these tools as an alternative, COM would assess equivalence as per the DDO73 and would be likely to accept certification by the relevant governing body. Accordingly, officers consider it appropriate to ensure the drafting of the DDO73 allows for such an outcome. There are some relatively simple drafting changes that are required to achieve that purpose, which will be marked up on a final day version of the control. However, Council expects these developments to be the exception rather than the rule as the majority of large development are using Green Star.
172. It otherwise remains appropriate to include the definition for “*Equivalent to the identified tool*” and the ability to use alternative tools, as there may be occasions where a permit application seeks to substitute a Green Star rating for the specified BESS rating, for smaller developments. This was raised by the University of Melbourne in its submission on the Amendment.⁹²

⁹² Submission 68.

Mandatory controls

173. In relation to the appropriateness of using mandatory controls as proposed by the Amendment, Council refers to the discussion of that issue in the Part A submissions,⁹³ and in Mr Glossop's statement of evidence.

174. In summary:

- a) The use of mandatory controls is an evolution of the existing discretionary controls in the Scheme. The strategic work that informed the Amendment identifies that the existing discretionary controls have not been successful in driving the type and rate of change in sustainability that is necessary to address the climate emergency. Consequently, it is appropriate to apply mandatory controls in order to achieve the outcomes that are sought.
- b) Further, the nature of the mandatory controls proposed in some cases departs from the type of mandatory controls that PPN59 applies to. This includes, significantly, the requirement to obtain particular scores or ratings under Green Star, NABERS, NatHERS, BESS, and the GF Tool. The DDO73 allows alternative tools to be used, or an alternative approach in the case of the GF Tool, provided the same outcome is achieved.
- c) The use of the mandatory controls will simplify the approvals process, by setting clear expectations for built form outcomes, and also using the achievement of ratings under external tools as a verification and confirmation mechanism (similar in some respects to how Green Star and NABERS are used as the verification options under the NCC) that the proposal meets the required standards.

175. Council also notes the comments from the Fishermans Bend Planning Review Panel, which stated, in relation to the introduction of mandatory Green Star ratings conditions for the CCZ4, extracted at paragraph 157 above.⁹⁴

176. These comments provide clear support for the application of mandatory controls that rely on an external ratings tool. Mr Glossop supports the use of mandatory controls as proposed in the Day 1 Version, including by reference to the external ratings tools.⁹⁵

⁹³ Document 10, Part A submissions, [144]-[158].

⁹⁴ Document 10g, *Fishermans Bend Planning Review Panel (AC)* [2018] PPV 71, PDF 158.

⁹⁵ Document 13, Glossop statement, [59]-[72], PDF 20-24.

‘Discretionary’ mandatory requirements

177. The Panel asked Mr Glossop a number of questions about the drafting of some of the proposed provisions that fall into what might be described as the ‘discretionary mandatory’ category – where the requirement is prefaced by the word ‘must’ but which also includes a discretionary element.

178. The relevant provisions are:

a) in the DDO73:

- in Table 4:

Must provide waste and resource recovery facilities that meet the requirements of the City of Melbourne's Guidelines for Waste Management Plans to the satisfaction of the responsible authority.

Must meet the requirements of a precinct waste management plan, if there is one in place, to the satisfaction of the responsible authority.

- in Table 5, the ability to use the alternative 40% metric, if the responsible authority “is satisfied” that the Green Factor score is not achievable having regard to the context and constraints of the site;

b) in the zone schedules:

Car parking areas must be retained in a single or a consolidated title as common property, unless the responsible authority agrees otherwise.

179. This approach is not unique in DDO schedules in the Scheme. For example:

a) the DDO1 includes a requirement that:

In the Central City area shown in Map 1 to Schedule 1 to the Design and Development Overlay, all car parking must be located in a basement unless it is part of a development that removes existing open to sky at grade car parking.

b) each of the DDO2, DDO10 and DDO40 includes a requirement that:

A permit must not be granted for buildings and works which would cast any additional shadow across the spaces within Table 2 to this schedule during the hours and date(s) specified for that space, unless the overshadowing will not unreasonably prejudice the amenity of the space:

c) the DDO19 includes a requirement that:

Any goods displayed in a building or on the site must not be able to be seen from St Kilda Road, unless it can be demonstrated to the satisfaction of the responsible authority that the design objectives of this schedule can be met.

180. In terms of how these provisions would operate in practice, it is correct that they are not purely mandatory requirements, as a discretion is included that allows the responsible

authority to accept a variation to the requirement. But this does not create interpretive or application difficulties. It is clear from the wording of each requirement what the expectation to be met is, and what is required to vary that expectation. They are also consistent with current drafting convention, and s6(2)(h) of the P&E Act:

(2) *Without limiting subsection (1), a planning scheme may—*

(b) *require specified things to be done to the satisfaction of the responsible authority, a Minister, public authority, municipal council or referral authority;*

181. Each of the relevant requirements could also be the subject of an application under s149(1)(a) of the P&E Act, given the formulation of words used, is the responsible authority was not satisfied, or did not give the necessary consent. That is a typical, and well understood circuit breaking mechanism.

Discretionary standards for alterations and additions between 1000sqm and 5000sqm

182. The Panel asked a question of Mr Glossop about whether the standards in Tables 1 and 2 for alterations and additions between 1000sqm and 5000sqm should be discretionary, and not mandatory. Council understood the question to arise from the following statement in the Hansen Report (emphasis added):⁹⁶

SCALE OF DEVELOPMENT

The GOCSAP (2019) report identified through the Standards the following typologies:

- *New developments >5000sqm*
- *New developments ≤ 5000sqm and Non-residential building alterations > 1000sqm*
- *New developments*

However, there are further references to other types of development within the document (such as ‘Major retrofit’) and discussion with the City of Melbourne internal stakeholders identified that many large scale ‘new’ builds are technically assessed as alterations and additions—for example, where an existing heritage building is partially retained at ground level and a tower constructed above. As such, a full review of the proposed scales of development was undertaken. The following were carried forward as part of the amendment (noting minor tweaks to expression):

- *New buildings of more than 5000 sqm gross floor area.*
- *Buildings and works which result in more than 5000 sqm additional gross floor area.*
- *New buildings equal to or less than 5000 sqm gross floor area.*

In order to deliver the outcomes sought by the project it was also identified that there was a potential gap in the ‘alterations and additions’ where these applied to ‘medium’ scale development (where the additional gross floor area is in the range of 1000sqm to 5000sqm beyond the identified ‘non residential’). Further investigations revealed an initial intention for this typology to be included as part

⁹⁶ Hansen Report, PDF 16-17.

of the controls however, no testing had been undertaken for this typology or for larger alterations and additions (over 5000sqm).

Given the importance that has been placed on ensuring the feasibility of the outcomes sought by this amendment, further testing was recommended, and is being undertaken. Should such testing establish that the Standards as drafted are suitable for application to alterations and additions, it is noted that the application of controls should be discretionary to reflect the variety of development outcomes and potential complexities in adapting buildings at this development scale. At the larger scale, a mandatory application is more likely to be achievable, but this would need to be carefully tested prior to implementation.

183. At the time, it was the case that the application of the ESD standards to alterations and additions was unclear and required clarification through further testing.
184. In order to provide that clarification following the finalisation of the Hansen Report, the 2022 HillPDA report was commissioned to test the feasibility of various alterations and additions typologies, and provided an evidence base to support the application of mandatory controls to that typology.⁹⁷
185. Additionally, as part of this hearing process, the application of mandatory and discretionary standards to ‘buildings and works associated with an existing building’ has been further assessed by the relevant experts, who support the Day 2 Version of the DDO73.

Green Factor Tool

186. Some submissions challenge the use of the Green Factor Tool (**GF Tool**), particularly where it is a tool created and operated by the City of Melbourne, but will sit outside the Scheme.
187. Use of the GF Tool as part of the Amendment is, not conceptually different from the other external ratings tools that are in common industry usage, and which are typically used to benchmark building performance. Those tools are subject to refinement and adjustment over time, as expectations, building performance, and technology change. A good example of that is the change from Green Star Design and As Built to Green Star Buildings. That change increased the requirements for a building to achieve a 4/5/6 star Green Star rating. That change was made by the Green Building Council, as the body responsible for the Green Star system. Green Star is a tool that has been referenced in the Scheme for some time now, and it is business as usual for Green Star ratings to be obtained for relevant building typologies. The same is true for NABERS, NatHERS and BESS.

⁹⁷ HillPDA, *Green Our City Action Plan – Draft Planning Requirements, 5 Additional sites*, February 2022, see Test Site 1 and Test Site 5.

188. The question is ultimately one of governance, and how and when the GF Tool can be updated, and who is able to participate in the process of updating the tool.
189. Both Mr Ashley and Mr Glossop are of the view that there needs to be a governance framework in place to set the rules for how the GF Tool is updated. Mr Glossop in particular is concerned to ensure that the fundamental inputs to the GF Tool cannot be altered such that the built form outcome required to achieve the GF Tool score mandated by the DDO73, without a further planning scheme amendment.⁹⁸
190. Council considers that such a change is not necessary, and that the GF Tool should be treated in the same way as other tools referenced in the planning scheme. In Yarra Planning Scheme Amendment C269yara Rewrite of local policies, Member Roney recommended that the date for the BESS tool be removed, on the basis that it was appropriate that it be amended from time to time
191. Nevertheless, if the Panel adopts Mr Glossop's recommendation, it is critically important that a version number is not inserted, as that would arguably prevent the council from implementing the interface type improvements that have been recommended by Mr Jacques. One way of implementing Mr Glossop's recommendation would be to adjust the definition of "Green Factor Tool" in the Day 1 version of the DDO73, so that the definition reads:
- Green Factor Tool** means the City of Melbourne's tool for measuring the green infrastructure credentials of a development (as amended from time to time except if the amendments impact the scoring regime under the tool).*
192. In addition, if necessary, a document could be included as a background document, setting out the four inputs to the Green Factor Tool that could lead to changes in the Green Factor score, so that there is clarity about what is required for the 0.55 score to be achieved at this point in time, and for the purpose of ensuring that those inputs are not altered by Council, without a further planning scheme amendment.
193. This proposed definition was put to Mr Glossop, as was the proposed background document, and he agreed that those changes would address his concern.

⁹⁸ Document 13, Glossop statement, [101], PDF 32.

194. Mr Ashley has prepared a memorandum setting out what those inputs are.⁹⁹ Council has translated that memorandum into a document that can be included as a background document,¹⁰⁰ if the Panel considers that to be appropriate.
195. In any event, Council intends to progress and finalise a governance framework for the GF Tool, which will set out the process for updating the tool. This will be progressed separately from this Amendment. The intention is for the framework to include the same sort of inputs as occur for the other external tools, including an proper evidence base to support changes to the tool, and consultation with and input from stakeholders, before the GF Tool is altered in ways that change what is required to achieve the relevant Green Factor score.

Table 2 NatHERS ratings

196. As outlined orally, Council has identified an error in the NatHERS star ratings set out in Table 2 for dwellings.
197. The error arises from an assumption about a then forecast increase in the NatHERS ratings specified in the NCC, at the time the background strategic work was undertaken.¹⁰¹ At that time, it was proposed, for purposes of the Amendment, that there be an increase above the NCC standard of 5 star to 6.5 star for individual dwellings, and an increase in average ratings from 6 stars to 7.5 stars. However, no distinction was made at that time in the GOCSAP or Hansen Report between apartment buildings and single dwellings – which are addressed separately in the NCC.
198. The led to the inclusion of the following minimum (mandatory) standard for dwellings in the Exhibited Version, without a distinction made between single dwellings and apartment buildings:

Type of development	Minimum (mandatory)
New buildings of more than 5000 sqm gross floor area Buildings and works which result in more than 5000 sqm additional gross floor area	For residential – An average of at least 7.5 star NatHERS rating across multiple dwellings, and a minimum of 6.5 star across NatHERS rating for each dwelling.

⁹⁹ Document 32, Evidence memorandum – Green Factor Tool Scoring Advice.

¹⁰⁰ Document 40, Green Factor Tool Scoring Regime (August 2024).

¹⁰¹ See GOCSAP, PDF 56; Hansen Report, PDF 39.

Buildings and works which result in between 1000 and 5000 sqm additional gross floor area	For residential - An average of at least 7.5 star NatHERS rating across multiple dwellings, and a minimum of 6.5 star NatHERS rating for each dwelling.
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199. Council understood that a 7 star NatHERS requirement for the NCC in Victoria would commence in 2024, and in the FMC Version of the DDO73, the requirements for individual dwellings were amended to stay above the NCC, as follows:

Type of development	Minimum (mandatory)
New buildings of more than 5000 sqm gross floor area Buildings and works which result in more than 5000 sqm additional gross floor area	For Dwellings - An average of at least 7.5 star NatHERS rating across multiple dwellings, and a minimum of a 7 star NatHERS rating for each dwelling.
Buildings and works which result in between 1000 and 5000 sqm additional gross floor area	For residential - An average of at least 7.5 star NatHERS rating across multiple dwellings, and a minimum of 6.5 star NatHERS rating for each dwelling.

200. What occurred when the NCC change was implemented in May 2024 was that the following star ratings for NatHERS were set out:¹⁰²

- a) for Class 1 buildings (houses and horizontally attached houses): a 7 star NatHERS rating;
- b) for Class 2 buildings (apartment buildings) (and using NatHERS Heating and Cooling Load Limits):
 - collectively an average energy rating of not less than 7 stars; and
 - individual an energy rating of not less than 6 stars.

201. The consequence of this is that the FMC Version (and therefore the Day 1 Version) of the DDO73 provides a higher than intended individual NatHERS star rating requirement in respect of apartment buildings.

202. The Day 1 Version is as follows:

Type of development	Minimum (mandatory)
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¹⁰² See Attachment 3 to the Part A submissions, PDF 63, for a summary of the current NCC 2022 requirements.

New buildings of more than 5000 sqm gross floor area Buildings and works which result in more than 5000 sqm additional gross floor area	For a Dwelling - An average of at least 7.5 star NatHERS rating across multiple dwellings, and a minimum of a 7 star NatHERS rating for each dwelling.
Buildings and works which result in between 1000 and 5000 sqm additional gross floor area	For a Dwelling - An average of at least 7.5 star NatHERS rating across multiple dwellings, and a minimum of 7 star NatHERS rating for each dwelling.

203. The issue is that:

- a) For single dwellings (Class 1 under the NCC) the DDO73 Day 1 Version matches the NCC requirement.
- b) For apartment developments (Class 2 under the NCC), the DDO73 Day 1 Version is 1 star above the NCC standard for individual dwellings, but was only intended to be 0.5 stars above.

204. To address this, Council proposes to revert to a 6.5 star NatHERS requirement for individual dwellings. This would achieve the intention for apartment dwellings, although not for single dwellings (which would have to achieve 7 stars anyway). An alternative would be to separate single dwellings out into a separate use category, but this was not exhibited, and Council does not consider it appropriate to do at this stage in the process. This could be considered for a future update to the DDO73.

Urban ecology requirement – Table 5

205. In relation to questions from the Panel about the ‘alternative’ pathway to achievement of the 0.55 Green Factor score in Table 5 of the DDO73, officers have considered again how that requirement might be drafted.

206. While Council considers that the existing drafting in the Day 1 Version is acceptable, an alternative approach might be as follows, to more directly reflect the permissive language in the head clause:

Must be designed and constructed to achieve a minimum Green Factor score of 0.55 using City of Melbourne's Green Factor Tool.

A permit may be granted to vary this requirement if achieving a minimum Green Factor score of 0.55 using City of Melbourne's Green Factor Tool ~~If it is not demonstrated to the satisfaction of the responsible authority that meeting the required Green Factor score is not achievable having regard to the context and constraints of the site.~~

If the requirement to achieve a minimum Green Factor score of 0.55 using City of Melbourne's Green Factor Tool is not met:

- *the equivalent of a minimum of 40% of the total site area must be provided as green cover.*
- *the green cover provided should satisfy all of the following elements:*
 - *A minimum of 65% of the required green cover is canopy planting and a minimum of 35% is understorey planting. Canopy planting and understorey planting may overlap.*
 - *Consist of native vegetation species.*
 - *Be located to maximise cooling of the adjoining public realm.*

207. Such a change would need to be coupled with an adjustment to clause 2.3 as follows (addition shown):

Unless otherwise stated in this schedule, permit cannot be granted to vary a requirement expressed with the term 'must' or a requirement that relates to a minimum (mandatory) standard of this schedule, except in the case of an amendment to a permit that was issued before the commencement of Amendment C376melb to this scheme.

208. In relation to the inclusion of a qualitative measure like “*Be located to maximise cooling of the adjoining public realm*”, Council notes that it is not unusual to include matter that requires an exercise of discretion in non-mandatory DDO requirements.

209. An example of this is the DDO1,¹⁰³ which sets out design requirements such as:

Pedestrian connections should be:

Direct, attractive, well-lit and provide a line of sight from one end to the other.

...

Arcades should:

Incorporate high quality exterior grade materials and finishes to all surfaces including paving, walls, ceilings and lighting.

...

Development should adopt a diversity of forms, typologies and architectural language, within a cohesive design framework, on large site where a development comprises multiple buildings.

Transitional provisions

210. In response to submissions about the need for transitional provisions, Council accepts that it is appropriate to include some transitional scope for the application of the Amendment.

211. Council has included transitional provisions in the Day 1 Version of the DDO73 to the effect that:

¹⁰³ See also the DDO19.

- a) in clause 2.3, in relation to amendments to a permit issued before commencement of the Amendment, the minimum standards switch to being discretionary; and
 - b) in clause 7.0, that a permit is not required under the DDO for applications (including applications to amend a permit) made before commencement of the Amendment.
212. Council has also included transitional provisions in the CCZ and DZ schedules to the effect that:
- a) the requirement to retain car parking spaces in common ownership does not apply to the subdivision of land undertaken in accordance with a planning permit issued before the commencement of the Amendment; and
 - b) the requirements in the schedules do not apply to an application (including an application to amend a permit) made before commencement of the Amendment.

Technical achievement and economic feasibility

213. A number of submissions raised concern about the language in the Exhibited Version of the DDO73 that referred to “*technically achievable or economically feasible*” and “*technical feasibility or economic viability*”, in terms of the uncertainty in those descriptors, and what would be required to demonstrate those matters in order to justify variation from a preferred standard in the DDO73.
214. The same question was raised in the preliminary review of the Exhibited Version of the DDO73 by a number of Council’s experts, including Mr Glossop.
215. Council has removed that language from the Day 1 Version.
216. The relevant decision guideline has also been made specific to developments of more than 5000sqm in area, or land in public ownership, in which cases the matters to be considered by the responsible authority where a preferred standard is not met include site context, technical impediments and economic impacts. The point of retaining a decision guideline in this form is that larger developments should be striving to achieve the preferred standards, but Council recognises that in some cases those preferred standards would result in world leading design, and there may be factors relevant to a particular site or development that mean that achievement of the preferred standards is not realistic or achievable. This decision guidelines gives appropriate direction to the responsible authority and permit applicant as to the factors that may be appropriate reasons why a preferred standard is not achieved.

Gas connections

217. A small number of submissions challenged the inclusion of the discretionary requirement in the DDO73 that new development not incorporate connections to gas services or other non-renewable energy.
218. Those submissions were directed primarily to the potential need for gas connections for cooking and specialist requirements like laboratories.
219. It is first relevant to note that as of 1 January 2024, new reticulated gas connections to residential developments have been prohibited. This prohibition was introduced by new clause 53.03 (Residential reticulated gas service connection). It is necessary, accordingly, for the DDO73 to not be inconsistent with that new particular provision – a drafting change has been made in the Day 1 Version of Table 3 in the DDO73 to exclude its application to the “*construction of a new dwelling or a new apartment development*” which mirrors the application of clause 53.03.
220. The intention of the discretionary requirement in Table 3 is to discourage all new gas connections. This includes for food and beverage uses. Council considers this to be strategically justified, given the imperative to achieve net zero, and in circumstances where there are mature alternative technologies available (including electric induction). There is no good reason, in the context of a climate crisis directly resulting from the burning of fossil fuels, why new food and beverage use should include gas connections, where electric alternatives are readily available. Green Star Buildings ratings also do not provide an exemption for gas cooking.
221. However, Council acknowledges that certain uses, such as laboratories, may require a gas connection, at least until such time as alternative energy sources are available. As such, Council has proposed a new decision guideline in the Day 1 Version of the DDO73, as follows:
- Whether the proposed reticulated gas service or other non-renewable energy connection is required for the purpose of education, research or industry.*
222. This gives direction to the responsible authority as to the circumstances in which a new gas connection may be appropriate.
223. The Panel will recall Mr Ritter’s whole hearted agreement with this approach in response to questions in cross-examination.

Specifying rates in the zone schedules

224. In relation to the bicycle parking rates, and the inclusion of “*The bicycle parking rates supersede the relevant parking rate specified at Clause 52.34*” in the FMC Version of the zone schedules, Council confirms that this provision was deleted from the Day 1 Version as it was superfluous – as Mr Glossop indicated.
225. Clause 52.34 sets fixed rates based on floor area, number of dwellings, or number of employees (or another similar metric). The proposed rates in the zone schedules are minimum rates, based on number of dwellings, or net floor area. There is no equivalence in the metrics used between the controls for all land uses – and so it is not easy to say whether, in all cases, the zone controls or clause 53.34 would impose a greater or lesser obligation.
226. But it is of no import. This is because both would need to be met, as applicable, and can be.¹⁰⁴ The ‘minimum’ drafting in the zone schedules allows for a greater number to be provided, if required by clause 52.34 for a particular use proposal. Further, where the DDO73 requires a greater number of bicycle parking spaces than specified in clause 52.34, no permit would be triggered under clause 52.34.
227. Further, it is noted that the approach adopted in this Amendment is consistent with the approach adopted in both the Fishermans Bend Urban Renewal (Amendment GC81) and the Arden Structure Plan area (Amendment C407melb).
228. In relation to the submission made about potential inconsistency with DPOs, while some of the schedules to the DPO refer to car parking,¹⁰⁵ or cyclist parking areas to be shown on a movement and parking plan or similar,¹⁰⁶ there is only one DPO that identifies bicycle parking rates, DPO12, which applies to the public housing renewal in Abbotsford Street, North Melbourne. That schedule specifies that the development plan should show:

Bicycle parking provided at a minimum of:

- one space per dwelling without a car space
- one space per five dwellings with a car space

¹⁰⁴ In that regard the Practitioner’s Guide at pg 16 states: “*An overlay may require permission for or prohibit development that is allowed by the zone. Neither control takes precedence over the other and both must be satisfied before a development can be carried out.*”

¹⁰⁵ DPO1, DPO8, DPO9, DPO11, DPO12, DPO13, DPO14.

¹⁰⁶ DPO2, DPO3, DPO4, DPO5, DPO6, DPO7, DPO13, DPO14.

– one space per 10 dwellings for visitors

229. The rates in the zone schedule would be slightly higher (1 resident space per dwelling, and 1 visitor space per 5 dwellings), but this would only be an issue at all if a permit has not been granted for that development which is not the case. Permit TPM-2021-5 was issued in 2021 for staged development of the land for six buildings, comprising apartments, townhouses, rooftop terraces, commercial floor areas and a reduction of car parking requirements. The development is under construction. No issue of consistency therefore arises.
230. To the extent that there are other approved development plans that include bicycle (or motorcycle or car share) parking rates, notwithstanding that the DPO schedules do not require that detail, and a permit is not applied for before commencement of the Amendment, the development would have to (and should) comply with the higher rates in the zone schedule. Any variation between the relevant rates is unlikely to require material changes to a proposed development in any event.
231. There are no DPO schedules that refer to motorcycle or car share parking rates.

Economic feasibility

232. A number of submissions raised the issue of economic feasibility, and the cost consequences of the Amendment, in terms of additional costs of construction to meet the new ESD standards, and costs associated with documentation for a planning permit application.
233. First, it is important to address in the context of the costs of doing nothing. There are clear benefits to the community from improved ESD outcomes. This was recognised by the Environmentally Efficient Design Advisory Committee in 2014, when it stated:¹⁰⁷

the Committee is satisfied that there appear to be clear social and environmental benefits of improved sustainable development outcomes including:

- *resilience to a warming climate with amenity and health benefits;*
- *higher thermal performance of buildings leading to reduced energy consumption, lower peak demand and better consumer outcomes;*
- *reduced water consumption; and*
- *at a broader planning level, better designed suburbs and urban environments with improved social, environmental and economic outcomes.*

234. The SGS Economic Assessment records significant broader social and community benefits from improved ESD built form outcomes, that are not necessarily quantifiable, but

¹⁰⁷ Document 10f, *Environmentally Efficient Design Local Policies (AC)* [2014] PPV, pg 67, PDF 76.

nonetheless are part of the set of benefits against which a proposal like the Amendment must be assessed. When those benefits are directed to combating and adapting to the effects of climate change, the importance of those benefits in the calculus is heightened.

235. In relation to the costs of inaction, focussed only on the City of Melbourne, the Economic Assessment concludes:¹⁰⁸

In addition to the above costs and benefits, it is relevant to consider the costs of inaction, and not responding to the challenges faced by climate change. The cost of a 'business as usual scenario' of not transitioning to a low carbon economy has been estimated at \$12.6 billion to the economy of the City of Melbourne by 205079. Delayed action on climate change subjects cities to increased economic, social and environmental risks that include:

- *Damage to commercial and residential building*
- *Damage to civil infrastructure*
- *Business productivity loss*
- *Disrupted services*
- *Heat-related deaths.*

236. In relation to the costs of construction, the evidence of Mr Szafrancic and Mr Spencer is that the costs of complying with the Amendment are unlikely to be a material factor in development decisions.
237. In relation to the costs associated with planning permit applications, one of the intentions for the approach taken in the DDO73 by the use of external ratings tool is to provide certainty in what is required to satisfy the relevant ESD requirements. Those tools will be used in the pre-application phase when a proposed development is being designed, and the achievement of the relevant score documented using the appropriate methodology and/or entry into the relevant agreement with the ratings tool operator.
238. That documentation would then be provided to Council with the permit application, demonstrating compliance with the applicable ESD requirements. This should reduce the administrative burden on both Council and the permit applicant, and is one of the significant advantages of referring to the external ratings tools in the DDO73 – if the documentation from the tool provider demonstrates that the applicable score is met by the proposed development (and subject to the later requirements in relation to construction and certification), then further investigation into compliance by Council (and requests for further information) should not be necessary. Where the external ratings tools are already being

¹⁰⁸ Document 17, Economic Assessment, [75], PDF 38.

used by proponents for other reasons (such as market expectations or competitive advantage) then it may be the case that the administrative burden (and therefore additional cost) arising from the Amendment, is minimal.

239. Otherwise, in relation to aspects of the ESD requirements that do not rely on external ratings tools, for example the urban heat island requirements in Table 6 of the DDO73, documenting compliance with those requirements should not be onerous. The permit applicant will be required to provide (other than for a single dwelling) a Sustainable Design Assessment, landscape plan package, and Waste Management Plan, setting out how the applicable ESD requirements have been met. While the content of the documents may expand as a result of the Amendment, those documents already typically form part of the package of materials that accompany a permit application for the development typologies that the Amendment is directed to.
240. Consequently, the Amendment should not have a material impact on the economic feasibility of development in the municipality.

Common ownership of car parking spaces

241. A number of submissions challenged the proposed requirement that car parking spaces be retained in common ownership, including on the basis that this would remove an avenue for developers to offset the costs of development by selling off car spaces, and also because of difficulties associated with adaptation of car parking spaces to other uses over time.
242. Ms Dunstan also raised issue with aspects of this part of the Amendment – addressed below.
243. Council's position is that it is necessary and appropriate to reduce the amount of car traffic in the municipality, both for reasons related to emissions, and amenity - particularly as the population of Melbourne continues to rapidly increase. Reduction in car traffic in the municipality is an inevitability over time, and something that Council is working towards.
244. As such, there will come a time when car spaces provided in buildings around the municipality will no longer be required for cars. It is therefore sensible to anticipate that future, and mandate consideration of adaptation of those spaces into different uses at the planning stage. The only way that adaptation can be practically achieved is if the car spaces are retained in single ownership. This is the purpose of the proposed new controls in the CCZ and DZ schedules. Council strongly advocates for the retention of those controls, and

notes that a similar approach is currently in place for the West Melbourne¹⁰⁹ and the Lorimer Precinct in Fishermans Bend.¹¹⁰ Ms Dunstan also supports these controls (subject to the addition of decision guidelines, as addressed below).

245. In relation to the submission made to the effect that developers may grant long term leases or licences over car spaces if it is not possible to sell them, to recoup some revenue, Council suggests that sort of approach is unlikely to stymie the purpose of the requirement to retain the car parks in single ownership. The purpose of that requirement is to anticipate a future condition where there is much reduced demand for car spaces. Where that occurs, one would expect a similar decrease in demand for long term leases and licences. Those forms of tenure are also not permanent, but contractual, and expire and can be terminated – at the conclusion of those arrangements, the car spaces would revert to single ownership, and then could be adapted into different uses. By contrast, if car spaces are sold into a multiplicity of ownership, that opportunity would be lost. Retaining the car spaces in single ownership is the superior long term planning outcome.
246. In relation to the new decision guidelines, the intention behind the drafting has been explained – for below ground spaces, the first question is whether they are suitable at all to be adapted. The use of the word ‘suitability’ is to direct the responsible authority’s attention to whether the particular space suits adaptation at all given its location. If it is suitable, then attention shifts to whether appropriate ceiling heights are provided.
247. In relation to above ground spaces, the assessment is intentionally different because those spaces are inherently more suitable to be adapted. Ms Dunstan confirms this in her evidence.¹¹¹ Therefore the question is whether the proposal has made those spaces able to be adapted, including by providing appropriate ceiling heights.
248. Officers are open to improvements in the drafting of these decision guidelines, and considers it appropriate that they are considered further on the final day of the hearing.

EV Charging

249. A number of submissions raised issue with the requirements in the zone schedules requiring car parking facilities to be designed in accordance with the following standards:

¹⁰⁹ SUZ6, cl3.0.

¹¹⁰ CCZ4, cl3.1.

¹¹¹ Document 14, Dunstan statement, [52].

Development of car parking areas should include the delivery of infrastructure (including electricity supply and signage), space and metering arrangements to support the installation of electric vehicle (EV) charging points.

Where a facility is proposed with 50 car parking spaces or more, all of the following should be provided:

- EV ready parking bays for a minimum of 5% non-shared parking spaces.*
- Sufficient infrastructure capacity to accommodate EV charging for 20% of parking space.*
- EV charging points at all allocated shared car spaces*

250. The stated basis for objecting to these requirements included challenges delivering EV infrastructure in multi-level and basement areas, and fire safety issues.
251. Council notes that the NCC 2022 includes requirements for the provision of electrical distribution infrastructure in apartment buildings to be able to accommodate chargers for 100% of parking spaces, and 10% for non-residential uses,¹¹² so the provision of EV charging infrastructure is already a minimum expectation. This is consistent with the increasing uptake of EVs.
252. The proposed requirements expands on this to require the provision of EV ready bays and charging points, as opposed to just the distribution infrastructure.

Approach to University campuses

253. In its submission, Melbourne University supports the Amendment, but suggests that a precinct based, rather than site specific, approach to achievement of the ESD requirements should be undertaken in respect of the University's campus – that is, the University should be able to rely on the 'greening' contributions made by existing parklands and green areas within the campus, where undertaking new development, rather than having to achieve the mandated GF Tool score within the development site itself. Council's position on this is that each new development to which the DDO73 applies needs to meet the relevant standards in its own right. Where there is existing greening within that development site, that will be accounted for by the GF Tool. However, otherwise, the development site needs to meet the relevant requirements. Council does not consider there to be any reason to exempt development within a University campus context on the basis of a difference in landowner arrangements, compared to other development sites.
254. The University makes a similar 'precinct based' submission in relation to the sustainable transport provision, for example, bicycle parking provision. Council has provided new

¹¹² See NCC 2022, J9D4.

design guidelines in the CCZ and DZ schedules in response, which requires the responsible authority to consider the characteristics of the site and proposed land use.

255. The University submission also queries the appropriateness of applying a permit trigger to land zoned PUZ, where previously no permit triggered applied; and an alternative approach to achieving the same sustainability outcomes should be considered. Council's position on this is that: first, the same ESD outcomes should apply to applicable new development on land in the PUZ, as is the case for all other land in the municipality; and second, the DDO is an appropriate tool to apply to land in the PUZ for that purpose, irrespective of the fact that a permit may not have otherwise been triggered for the new development – this is because of the importance of achieving the necessary ESD outcomes for new developments; and third, it is not clear that the same outcomes could be achieved through other controls.

Application of NABERS to all non-residential development

256. A small number of submissions criticised the application of a NABERS Energy rating requirement for all non-residential development. The Exhibited Version of the DDO73 relevantly provided, in Table 2, for non-residential uses:

Type of development	Minimum (mandatory)	Preferred
New buildings of more than 5000 sqm gross floor area	For non-residential - A minimum 5.5 star NABERS Energy rating	For non-residential - A minimum 6 Star NABERS Energy rating
Buildings and works which result in more than 5000 sqm additional gross floor area		

257. The specified NABERS Energy rating is based on an office typology, and is not necessarily achievable for other uses. Accordingly, this was a reasonable criticism.
258. Mr Ritter raised a similar concern in his review of the Exhibited Version. In his statement Mr Ritter states, by way of explanation of the issue:¹¹³

This grouping of 'all uses other than a dwelling' is not granular enough to be able to set NABERS targets appropriately. Whilst the prescribed minimum, NABERS 5.5 Star rating, represents local industry-accepted best practice sustainability ambition in the commercial offices market, it is harder to achieve a similar standard for buildings such as hotels or shopping centres and it would be appropriate to set a lower target here so that the step change is not as demanding. In addition, NABERS Energy is not available for all building types e.g. a laboratory, arts or culture building and it would not be possible to establish a NABERS Energy target for these typologies.

¹¹³ Ritter statement, PDF 13.

259. In response to this issue, in the FMC version, Council modified the requirement to require large non-residential developments to obtain a NABERS commitment agreement, unless it was demonstrated that no NABERS Energy rating is available for the building type.
260. In his review of the FMC Version Mr Ritter sought further clarification directed to more explicitly stating the energy targets for different typologies.
261. The Day 1 Version now provides:

Type of development	Minimum (mandatory)	Preferred
New buildings of more than 5000 sqm gross floor area Buildings and works which result in more than 5000 sqm additional gross floor area	For all uses other than a Dwelling, a Green Star Buildings rating with Credit Achievement for the NABERS Commitment Agreement Pathway of Credit 22: Energy Use, unless it is demonstrated to the Responsible Authority to be unavailable for the relevant use.	For all uses other than a Dwelling, a Green Star Buildings rating with Exceptional Performance for the NABERS Commitment Agreement Pathway of Credit 22: Energy Use.

262. Further, the chapeau to Table 2 provides that the requirement to meet the standard means:

In relation to the National Australian Built Environment Rating System (NABERS) standard:

- *The development must be designed to be able to achieve the rating under the National Australian Built Environment Rating System (NABERS Energy) specified in the Green Star Buildings NABERS Commitment Agreement Pathway of Credit 22: Energy Use.*
- *Within 24 months of occupation of the building, or as otherwise agreed with the Responsible Authority, the development must be certified as achieving the applicable NABERS star rating.*

263. Mr Ritter is satisfied that these changes appropriately address his key recommendation.

RESPONSE TO EXPERT EVIDENCE

Introductory

264. Council has taken a pragmatic consultative approach to the drafting of the new and amended controls and policy provisions. That approach has been to consult early with the independent experts to seek their views on the drafting in the Exhibited Version.
265. The preliminary comments from the experts, together with submissions made on the Amendment, were considered by the responsible officers and used to guide the amendments made in the FMC Version.

266. The FMC Version was then considered by the experts for purposes of the preparation of their witness statements. The various recommendations made by the experts in their respective statements in respect of the FMC Version have led to further drafting changes in the Day 1 Version.
267. Almost all of the expert recommendations have been adopted in the Day 1 Version – changes made in response to issues raised by experts are highlighted blue.
268. Where an expert recommendation has not been adopted (in whole or part), Council has provided an explanation of the rationale for that decision. Document 21 filed with the Panel provides a table setting out that rationale. For convenience, a summary of the expert evidence, and Council’s response to the various recommendations is set out below.
269. The Day 1 Version has also been provided to the experts for final comment. There remain only a small number of drafting and conceptual issues where the position of the relevant expert does not align with Council’s position – these are identified below, with Council’s response.

Mr Glossop

270. Mr Glossop is a highly experienced strategic town planner. He has given close attention to the strategic justification for the Amendment, as well as the drafting of the proposed ordinance. Mr Glossop’s overall conclusions on the Amendment are:¹¹⁴
- *Amendment C376 melb is strategically justified.*
 - *The selection of the Design and Development Overlay to implement the prescribed built form outcomes proposed by the Amendment is appropriate.*
 - *DDO73 is generally well drafted, subject to some clarification.*
 - *The changes to zones are generally appropriate subject to some minor matters.*
 - *Policy changes are appropriate however, text should be inserted to clarify their application.*
271. Mr Glossop was asked to undertake a preliminary assessment of the Exhibited Version. He has also considered the FMC Version and Day 1 Versions. At each stage, drafting changes have been made to address the recommendations made by Mr Glossop. Those changes include:
- a) in the DDO73 to:

¹¹⁴ Document 13, Glossop statement, [124], PDF 40.

- relocate, and simplify, the exemption to the urban ecology requirements regarding the use of the GF Tool, from clause 2.3 of the DDO73 into (now) Table 5;
 - adjust the wording and application of the transitional provisions, including:
 - the basis on which a permit can be granted that varies a mandatory requirement for an amendment to a permit issued before commencement of the Amendment (clause 2.3); and
 - switch off the permit trigger for all applications made before commencement of the Amendment;
 - clarify that the requirements of Table 1 do not apply to land in the CCZ4 (Fishermans Bend Lorimer Precinct), given the existing ESD requirements in that recently approved schedule;
 - clarify that the discretionary requirement in Table 3 that new developments should not incorporate connections to gas or other non-renewable energy does not apply to electricity supply (given the current sources of electricity supply in Victoria); and to include a new related decision guideline for where gas connections are proposed;
 - add discretion into the mandatory requirements for waste and resource recovery in Table 4; and
 - delete “landmark” from the first decision guideline;
- b) in clause 15.01-2L.01 Environmentally sustainable building design, add a new strategy that specifies that a Green Travel Plan is required for development of more than 5000sqm in new area;
- c) in clause 72.08, to delete Fishermans Bend Water Sensitive City Strategy from the list background documents in the Scheme.
272. In relation to Mr Glossop’s recommendation that the background calculations for the GF Tool be finalised with the Amendment, Council refers to matters set out in paragraph 191 - 195 above.

273. In relation to the local policy at clause 11.03-6L-01 (Arden Precinct) and clause 11.03-6L-06 (Fishermans Bend), Mr Glossop raised an issue with the potential for duplication or conflict between those policies and the DDO73 and proposed ESD policies. Council agrees with these issues and accordingly now proposes to add a qualifier to both of those local policies, as part of this Amendment, to the effect that the ESD policy guidelines in those two policies do not apply where a permit is required under the DDO73. While those policy amendments have not previously been part of the Amendment package, and were not exhibited, Council is comfortable that the changes can be made as part of the Amendment as the effect is not to increase or add to the guidelines to be considered for an application in Arden or Fishermans Bend, but rather to turn off those guidelines where the DDO73 applies. Council does not consider that this would cause any material detriment to any person.
274. In relation to the stormwater policy at 19.03-3L, Mr Glossop raised a question as to whether this policy as proposed to be amended is necessary to retain. Council consider that it is necessary and appropriate to retain the amended provision, as it has a broader application than the DDO73 (and clauses 53.18, 55.03 and 58.03), including for extensions to single dwellings. Council understands that Mr Glossop is now satisfied that it is appropriate to retain clause 19.03-3L as proposed in the Day 1 Version.
275. Mr Glossop's questions about the transitional arrangements also drew Council's attention to a further change that ought to be made to DDO73:
276. The DDO head clause states:

43.02-3

Subdivision

Permit requirement

A permit is required to subdivide land.

This does not apply if a schedule to this overlay specifically states that a permit is not required.

...

277. The DDO 73 (Day 1 and FMC Versions) state:

3.0 Subdivision

None specified.

278. DDO73 should be amended to state:

3.0 Subdivision

A permit is not required to subdivide land.

279. There are three minor drafting clarification matters raised by Mr Glossop that Council has not addressed by drafting changes. These relate to:

- a) in proposed clause 02.03-7:
 - the use of the term “*micro-mobility*”; and
 - the strategy to: “*Support private vehicle access to the city for deliveries, servicing and for people who need to use a car*”;
- b) the strategy in clause 15.01-2L-01 to “*Where a tower is proposed, support development that is well spaced and offset to provide good access to an outlook, daylight and to minimise overlooking*”.

280. As noted in Mr Glossop’s presentation, his view is as follows:

- a) he now has no objection to the term ‘micro-mobility’ remaining;
- b) he considers that in the strategy “*Support private vehicle access to the city for deliveries, servicing and for people who need to use a car*”, the emphasis need to be on the word “need”; and
- c) if the strategy “*Where a tower is proposed, support development that is well spaced and offset to provide good access to an outlook, daylight and to minimise overlooking*.” in clause 15.01-2L-01 is to be retained, there should be consistency between that strategy and the similarly worded strategy in clause 15.01-1L-04 (“*Support development of towers that are well spaced and offset to provide good access to an outlook, daylight, sunlight and to minimise overlooking between habitable room windows.*”)

281. Council does not consider changes to be necessary in 02.03-7 to address Mr Glossop’s concerns:

- a) micro-mobility is a word now in common usage; and
- b) in relation to the strategy directed to the use of cars, when read in context, Council considers that it will be properly understood as applying to those people who have different needs to the ordinary person (eg people who may be mobility impaired, for instance), not just people who want the convenience of a car – the latter reading would be inconsistent with other local policy direction that seeks to reduce car usage.

282. Council agrees that the new strategy for “towers” proposed for clause 15.01-2L-01 is unnecessary given the existing similar strategy in clause 15.01-2L-01, and will delete that strategy in the final version of the policy.

283. Mr Glossop also recommends that Council consider adding the *Urban Stormwater Best Practice Environmental Management Guidelines* as an incorporated document in Clause 72.04. Council has no objection to this recommendation, but considers it to be beyond the scope of the Amendment.
284. Otherwise, there are no remaining recommendations from Mr Glossop about the drafting and content of the Amendment and that have not been addressed through drafting changes (where appropriate).
285. In relation to the questions asked of Mr Glossop by the Panel, he had clearly thought through all of these issues raised by the Panel's questions, and had clear and compelling responses.

Mr Ritter

286. Mr Ritter was engaged to undertake a review, primarily, of the DDO73. He was asked to provide a preliminary assessment of the Exhibited Version of the Amendment controls,¹¹⁵ and his comments and recommendations informed the preparation of the FMC Version and Day 1 Version.
287. Mr Ritter's overall conclusion on the Amendment is as follows:¹¹⁶

I commend the City of Melbourne and supporting team on the work that has been carried out over the last few years to bring to fruition this updated planning scheme proposal. It is in line with their stated objectives to address the declared climate and biodiversity emergency with a focus on net zero carbon emissions, increasing green cover and supporting general building and precinct scale ESD improvements to mitigate and adapt to future climate change impacts.

Having been through a process of feedback and iteration with the City of Melbourne since my initial engagement for initial review of the exhibited document on 28th July 2023, and the improvements that have been made, I am fully supportive of the FMC version DDO73 conditional on the key recommendation proposed in section 2.5.

288. Mr Ritter's key recommendation is as follows:¹¹⁷

My full support for the FMC version of the proposed amendment is subject to a recommended addition to the wording of DDO73, Table 2. I recommend that for developments that are greater than 5,000m², the Credit Achievement Performance for the Green Star Buildings NABERS Commitment Agreement Pathway of Credit 22: Energy Use, is specifically referenced for the Minimum (mandatory) performance.

¹¹⁵ Document 11, Ritter statement, Appendix E Preliminary Opinion, from PDF 49.

¹¹⁶ Document 11, Ritter statement, pg 27, PDF 28..

¹¹⁷ Document 11, Ritter statement, pg 5-6, PDF 6-7.

A suggested wording around this for use in the Minimum (mandatory) field, using similar language the City of Melbourne has already adopted in FMC version would be:

For all uses other than dwelling, a NABERS Energy Commitment Agreement must be entered into unless it is demonstrated to the Responsible Authority to be unavailable for the relevant use.

A Green Star Buildings rating with Credit Achievement Performance via the NABERS Commitment Agreement Pathway of Credit 22 Energy Use, unless it is demonstrated to the Responsible Authority to be unavailable for the relevant use type.'

An approach consistent with the above should be also used for the Preferred performance requirements of Table 2, which would need to achieve the 'Exceptional Performance' requirements of the credit.

289. The intent of that key recommendation is accepted by Council, and has been addressed in the Day 1 Version of Table 2 in the DDO73 in the minimum standard for all uses other than a dwelling, which now provides:

For all uses other than a Dwelling, a Green Star Buildings rating with Credit Achievement for the NABERS Commitment Agreement Pathway of Credit 22: Energy Use, NABERS Energy Commitment Agreement must be entered into unless it is demonstrated to the Responsible Authority to be unavailable for the relevant use.

290. The specific recommendation that a Commitment Agreement be entered into has not been included as this is already required by the Application Requirements in clause 5.0 and Table 8¹¹⁸ of the DDO73.
291. Mr Ritter has made a number of additional non-critical recommendations. Council has considered, but that it has not adopted, or not wholly adopted, into the Day 1 Version of the DDO73. The reasons for this are summarised below.

Non-critical recommendation	Council response
DDO73, Table 1: The minimum BESS score should be increased to 60%	Council does not object to increasing the minimum BESS score, however, considers that it would be inappropriate to do so at this stage of the process. Rather, Council will consider increasing or adjusting the BESS requirements (and other targets) in future updates to the DDO73.
DDO73, Table 2: Add explicit NABERS targets for Hotels, Offices and Shopping Centres.	Council generally supports the purpose of this recommendation, and has included additional drafting in response to this in the chapeau to Table 2. However, the addition of the explicit targets to Table 2 is not supported because the NABERS class types do not clearly align to defined land uses

¹¹⁸ Noting the incorrect table numbering in the Day 1 Version of the DDO73.

Non-critical recommendation	Council response
	under the Scheme, and in any event, adding the explicit targets would duplicate the new drafting in the chapeau.
DDO73, Table 5 (now Table 6): Provide additional guidance calculations and diagrams to explain how PV panel and façade areas are to be included in the 75% of site area requirement in relation to the Urban Heat Island Effect.	Council supports this, and intends to prepare guidance notes to this end. This would occur separately from the Amendment.
DDO73, Table 7: All development – require consideration of WC flush for the use of alternative water sources.	Council has no objection to this recommendation, but consider that it would not be appropriate to make at this stage of the process.
DDO73, Table 7: Larger developments: make achievement of the best practice stormwater guidelines mandatory (“must achieve”). make the use of MUSIC modelling mandatory	Council does not support making achievement of the best practice guidelines mandatory as that would be inconsistent with the requirements in clauses 55.03-4, 58.03-8 and 53.18. Council does not object to making the use of MUSIC modelling mandatory, but considers that it would not be appropriate to make this change at this stage of the process.
DDO73, Table 7: Larger developments – Increase the minimum potable water saving target to 30%.	Council does not object to increasing the target, but considers that it would not be appropriate to make this change at this stage of the process.
Add an explicit requirement for all development to demonstrate a 20% up front embodied carbon reduction target.	Council does not conceptually object to this recommendation, but considers that it would not be appropriate to make this change at this stage of the process.

292. There are no outstanding recommendations from Mr Ritter to be addressed through further drafting changes in the DDO73.

Mr Ashley

293. Mr Ashley had primary responsibility for the creation of the Green Factor Tool (**GF Tool**). His statement of evidence, and the associated video walkthrough of the GF Tool, and the article *Integrating Green Infrastructure into Urban Planning: Developing Melbourne’s Green Factor Tool*, explain:

- a) the genesis of the GF Tool;
- b) the research, both local, national and international, that underpin the critical inputs to the GF Tool, including the eight ecosystem services, and how and what weightings were assigned to each ecosystem services for purposes of the GF Tool;
- c) the process used to create and test the GF Tool; and
- d) the efforts so far to create a governance framework for the operation, management, and amendment of the GF Tool.

294. In relation to how the GF Tool is referred to in the DDO73, Mr Ashley's assessment is as follows:¹¹⁹

I have reviewed the DDO73 controls as they refer and relate to the Green Factor Tool and the Urban Ecology standards at Table 6 of the proposed DDO 73 and consider them appropriate based on my detailed knowledge of the Green Factor Tool and urban development in the City of Melbourne, noting:

- *That all new buildings listed in Clause 2.2 of Schedule 73 to Clause 43.02 Design and Development Overlay should require an assessment against the Green Factor Tool*
- *That all typologies listed can meet the technical standard proposed of a 0.55 score using the Green Factor Tool*
- *That by optimising the greening forms, vegetation types (indigenous, native, exotic and productive) and locations of greening in the majority of cases a 0.55 score is achievable with less than 40% green cover*
- *That of the land uses listed in Clause 2.2 of Schedule 73 to Clause 43.02 Design and Development Overlay issues with maintenance of greening (especially green roofs) for single dwellings and town homes in private ownership may occur. Whilst this does not impact the technical feasibility of meeting the proposed standard, proactive education and planning enforcement may be beneficial at this scale.*

295. Mr Ashley has not made any recommendations for adjustments to the DDO73.

Mr Jacques

296. Mr Jacques evidence addresses:¹²⁰

- a) his personal experience using the GF Tool, including issues that he has experienced with the interface and workings of the GF Tool;
- b) improvements that he would like to see made to the GF Tool – all of which seek to improve the usability of the GF Tool, rather than being directed to the fundamental

¹¹⁹ Document 10a, Ashley statement, [116], PDF 41.

¹²⁰ Document 12, Jacques statement.

inputs – the ecological factors, weightings, and calculation methodology used to generate Green Factor Scores;

- c) his opinion in support of the use of the GF Tool as part of the Amendment, to drive improved ‘greening’ outcomes across the municipality.

297. Subject to some recommendations (addressed below), Mr Jacques’ ultimate conclusion on the Amendment is:¹²¹

My professional experience over the last 25 years has confirmed that the provision of landscape and green infrastructure on new buildings is not innovative - it has become an orthodox and accepted outcome.

The Green Factor Tool’s innovation is in providing a way of measuring the provision of green infrastructure on buildings and framing that measure in terms of urban ecology. My experience is that the application of the Green Factor Tool is about tweaking accepted industry norms rather than reinventing them.

I agree that the target Green Factor score of 0.55 is an appropriate standard for Amendment C376, because in my experience, there are no significant technical constraints with achieving this score and that flexibility is available within the tool for designers to further increase Green Factor scores by, for example, specifying productive or indigenous plants.

In light of this, I strongly support Amendment C376’s mandatory requirement that new buildings be designed and constructed to achieve

298. Council supports (in whole or part) the following recommendations made by Mr Jacques, as summarised below.

Recommendation	Council response
Rethink/redesign the interface for the GF Tool, including a web-based or downloadable spreadsheet.	Council accepts this recommendation and will address this separately from the Amendment.
That the GF Tool allow for the subtraction of encumbrances like retained heritage buildings from the site area.	Council supports this in part. Council has added a new decision guideline to the DDO73 to direct consideration of whether the retention of an existing building (or part thereof) or a restriction impedes the achievement of a Green Factor score of 0.55. Council has also clarified in the DDO73 where a requirement is intended to relate to an extension to an existing building.

¹²¹ Document 12, Jacques statement, [136]-139], PDF29.

Recommendation	Council response
In respect of campuses (eg University) without conventional property boundaries: • a ‘project boundary’ could be used to determine the site area used to calculate the Green Factor score, which could include adjacent existing green areas; but • where there are conventional property boundaries, any (applicable) new building should have to meet the DDO73 as would be the case for any other proponent.	Council supports this recommendation. The GF Tool uses the site boundaries of the proposed development, which can be manually entered by the user, as is not automatically tied to a particular lot number or address. That is, the GF Tool can be applied to the ‘planning unit’ (where not simply the title boundary), the subject of the application, in the ordinary way.
In relation to Submission 66, the clarification of the terms “green infrastructure”, “ecosystem services” and “hardscaping” in the DDO73.	Council agrees that the defined terms are confusing. The definitions of “green infrastructure” and “ecosystem services” have been deleted in the Day 1 Version, and the relevant items now listed directly in Table 6. The definition of “hardscaping” has been amended to exclude roof areas.

299. Mr Jacques also recommended as part of the GF Tool, that guidance or scenarios be provided directed to showing proponents how changes after planning approval and before construction should be captured, reported, and approved.¹²² The Panel asked similar questions whether there should be a ‘certification’ equivalent process after completion of a project to ensure that the greening elements are maintained appropriately.

300. In response, it is submitted that changes between planning and construction will be dealt with through permit conditions in the ordinary manner. Council does not consider guidance to be necessary, but will consider providing guidance, as required once the amendment is implemented if it becomes apparent that there is any confusion about how changes can be accommodated from planning to construction.

Ms Dunstan

301. Ms Dunstan was asked by Council to provide preliminary comments on the Exhibited Version of the Amendment documents. Her focus was on:

¹²² Document 12, Jacques statement, [80]-[85], PDF 18.

- a) the sustainable transport policy in clause 15.01; and
 - b) the car, motorcycle and bicycle parking related amendments to the CCZ and DZ schedules.
302. The rationale for the various changes Ms Dunstan recommended to the Exhibited Version is set out in her statement of evidence,¹²³ as well as her support for the revised drafting in the FMC Version.
303. Council has accepted all of Ms Dunstan's recommendations that lead to drafting changes in the ordinance. Changes have been made in the FMC Version and Day 1 Version to:
- a) update and modernise the policy in clause 02.03-7;
 - b) provide for the preparation of a Green Travel Plan for relevant developments of more than 5000sqm in area at the permit application stage;
 - c) add a decision guideline into the CCZ and DZ schedules, to guide decision making in relation to the adaptation of car parking spaces; and
 - d) adjust the bicycle, motorcycle and car share parking rates for different land uses in the CCZ and DZ schedules.
304. There are no remaining drafting issues that need to be addressed to respond to Ms Dunstan's recommendations.
305. There are two matters raised by Ms Dunstan that are outside the scope of the Amendment. Those matters are:
- a) to review the Parking Overlay schedules in the near future to, similar to what has occurred in the Arden Precinct, preference no car parking, and include decision guidelines regarding adaptation and common ownership of car parking areas, and car share parking spaces; and
 - b) to delete references to motorcycle parking in Schedules 1, 2 and 3 to the Parking Overlay, on the basis that the head clause does not refer or relate to parking other than for cars.
306. Council accepts both of these recommendations, and intends to separately take steps to address these matters.

¹²³ Document 14, Dunstan statement.

Mr Szafraniec and Mr Spencer

307. The task undertaken by Mr Szafraniec and Mr Spencer was, in essence, to reconsider the ‘impact’ of the Amendment, in terms of development feasibility and costs, compared to benefits of the Amendment.¹²⁴ This work was based on:

- a) consideration of the ‘state of play’ in relation to ESD standards and associated cost increments, by reference to available literature and documented experience;
- b) consideration of the benefits more broadly associated with improved ESD built form outcomes, as identifiable from the relevant literature and experience;
- c) assessment of six case studies, using real world example planning permits, updated to a contemporary ‘base case’ construction standard (reflecting changes to the NCC and ESD requirements since the permits were granted), to understand the additional costs that would be associated with implementation of the Amendment;
- d) as part of that exercise, inputs from:¹²⁵
 - the City of Melbourne’s ESD team,¹²⁶ which provided the ‘base case’ updates from review of the approved permit applications against contemporary NCC and ESD standards;
 - architectural designs by Fieldwork,¹²⁷ to show what needed to change in the approved permit plans to meet the identified contemporary ‘base case’ as well as the ESD requirements in the Amendment;
 - costings of those changes by WTP,¹²⁸ to identify the cost increment associated with the implementation of the Amendment; and

¹²⁴ Document 16, Szafraniec statement. Document 15, Spencer statement. Document 17, Economic Assessment.

¹²⁵ Council notes Document 24, in which SGS has corrected a number of errors that were identified in the inputs to the SGS work, and consequently, the results for three of the six case studies (sites 1, 2 and 6) addressed by SGS. However, the corrections made do not alter the findings or conclusions in the SGS report.

¹²⁶ Document 17b.

¹²⁷ Document 17c.

¹²⁸ Document 17d.

- valuation inputs from M3,¹²⁹ which identified the existing use values and residual land values, for the six case studies to assist in the feasibility assessment.

308. The conclusions reached in the SGS Economic Assessment can be summarised as follows:

- a) market forces have already been leading to improvements in ESD outcomes for new developments; as such, the Amendment would be accelerating an established market trend;
- b) based on the case study work undertaken, the Amendment will likely only have a small impact on the cost of development in the municipality. While the impacts will vary depending on the site, in most cases the effect will be marginal;
- c) if the Amendment results in some developments not being economically feasible, it is probable that those developments would be replaced by alternative developments elsewhere, minimising the overall net impact of the Amendment;
- d) the case studies demonstrate that the Amendment will materially improve ESD outcomes, although individual impacts are highly variable;
- e) there are a number of lasting non-market benefits likely to be realised by the Amendment, including: lower energy use; less embodied carbon; additional renewable energy generation; decreased urban the heat island effect; higher level of green cover; lower water consumption; and better support for sustainable transport; and
- f) the Amendment supports net community benefit and sustainable development.

309. Council acknowledges, as noted by SGS, that the type of cost benefit analysis (**CBA**) that is often used for government policy and investment decision making, is not well suited to a strategic planning context.¹³⁰ However, various of the inputs to a CBA are useful as part of the integrated decision making/net community benefit assessment that is the primary task for planning decision makers.

310. Council also acknowledges that a number of the benefits of the Amendment that SGS identifies are very hard to quantify – and some not all amenable to quantification at all. This is not unusual in planning – it a common feature of strategic planning for more amorphous concepts like amenity and social and community benefit to be considered as part of the net

¹²⁹ Document 17e.

¹³⁰ Document 17, Economic Assessment, [67]-[68], PDF 35.

community benefit assessment. This is one of the benefits of having planning scheme amendments assessment by an independent expert planning panel. Planning is not all about quantifiable concepts, it is about how the use and development of land in a municipality should be undertaken, in to the future, to *inter alia*.¹³¹

- (a) *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;*
- (g) *balance the present and future interests of all Victorians.*
- ...
- (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;*
- (e) *to facilitate development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes;*

311. This Amendment is one that has the long term interests of the community directly in mind. The entire point of the Amendment is to quickly drive improvement in sustainability outcomes for the municipality, as part of a considered and coordinated response to the climate emergency.

312. The conclusion in the Economic Assessment is that the costs, to the extent reasonably quantifiable from the base study approach used, are comparatively low, and unlikely to materially impact the feasibility of construction of the relevant building typologies in the City of Melbourne.

313. In relation to the question of net community benefit, the Economic Assessment suggests that:¹³²

the Amendment is likely to:

- *Increase development costs to a small degree, noting these increases are likely to diminish over time.*
- *Increase purchase prices where purchases are willing to pay more for sustainable building design features the included in new developments.*

¹³¹ *Planning and Environment Act 1987* (Vic), s4(1) and (2).

¹³² Document 17, Economic Assessment, [74], PDF 37.

- *Provide a range of additional (non-traded) benefits which will vary by development.*

314. As identified earlier, in relation to the costs of inaction, the Economic Assessment concludes:¹³³

In addition to the above costs and benefits, it is relevant to consider the costs of inaction, and not responding to the challenges faced by climate change. The cost of a 'business as usual scenario' of not transitioning to a low carbon economy has been estimated at \$12.6 billion to the economy of the City of Melbourne by 2050. Delayed action on climate change subjects cities to increased economic, social and environmental risks that include:

- *Damage to commercial and residential building*
- *Damage to civil infrastructure*
- *Business productivity loss*
- *Disrupted services*
- *Heat-related deaths.*

PART B POSITION ON THE AMENDMENT

315. At officer level, Council's Part B position on the Amendment is captured in the Day 1 Version, with the following further changes:

- a) DDO73 should be amended to:
 - in Table 2, replace "*minimum of a 7 star NatHERS rating for each Dwelling*" with "*minimum of a 6.5 star NatHERS rating for each dwelling*";
 - if the Panel considers appropriate, redraft the requirement in Table 5 as set out in paragraph 206 above;
 - under clause 3.0 add:

3.0 Subdivision

A permit is not required to subdivide land.
 - if the Panel considers appropriate, change the definition of the Green Factor Tool generally as proposed in paragraph 191 above and add the Green Factor Tool Scoring Regime (20 August 2024) as a background document;
 - add "*or equivalent*" in appropriate places to enable certification under different ratings tools.

¹³³ Document 17, Economic Assessment, [75], PDF 38.

- b) Delete the following proposed strategy from cl15.01-2L-01:

Where a tower is proposed, support development that is well spaced and offset to provide good access to an outlook, daylight and to minimise overlooking.

316. Council commends the Amendment to the Panel, and respectfully requests that it recommend that the Amendment proceed on the basis that there is a very strong strategic justification for the Amendment, identified in the background documentation, the expert evidence, and Council's submissions to the Panel.

21 August 2024

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Jordan Wright

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Instructed by Melbourne City Council