

18 May 2021

Building Review Secretariat
Better Regulation Victoria
GPO Box 4379, Melbourne, VIC 300

Re: Framework for Reform: Modernising Victoria's Building System.

The Council Alliance for a Sustainable Built Environment (CASBE) is pleased to provide the following response to the **Framework for Reform: Modernising Victoria's Building System**.

[CASBE](#) is a collaborative alliance of Victorian Councils committed to the creation of a sustainable built environment within and beyond their municipalities. Our focus is on applying widely accepted Environmentally Sustainable Development (ESD) principles to the built environment through the Victorian statutory planning system. CASBE has developed the Built Environment Sustainability Scorecard ([BESS](#)) - an online tool for assessing the sustainability of development proposals at planning stage. BESS provides a consistent assessment methodology for CASBE's Sustainable Design Assessment in the Planning Process ([SDAPP](#)) Framework – an approach adopted by numerous Victorian Councils.

As a Council-led organisation, CASBE has enabled broad-scale positive change to Victoria's built environment through collaborative, local government led action. Uniting 33 Councils across Victoria, CASBE represents over 70% of Victoria's population.

Since its inception in 2004, CASBE's core area of focus has been focussed on new buildings and largely, new homes. SDAPP and BESS both consider not only whole of building environmental issues, but also encourages development applicants to build new homes in a more environmentally sustainable way. Typical ESD inclusions in new home include rainwater harvesting tanks connected to internal toilets, laundries and gardens; vastly improved energy performance beyond base National Construction Code (NCC); passive design measures including passive heating and cooling, natural ventilation and climate responsive design; focus on improved landscaping and biodiversity; and overall more liveable buildings.

We believe the work that CASBE has achieved, and continues to progress, aligns greatly with the objectives of the Expert Panel review and is further discussed below.

CASBE commends the Victorian Government for their appointment of the independent Building Reform Expert Panel (the Panel) and its review of the building legislation and regulatory system (the Review). We are delighted that the Panel and Review have been established and are excited about the substantial positive impact this action will create. We are delighted to submit the following submission in response to the Framework for Reform discussion paper and would be delighted to discuss these with you in further detail.

Objective #1: To deliver safe, compliant, durable, affordable and sustainable housing and buildings efficiently and effectively

CASBE strongly supports the above objective. CASBE Member Councils have significant experience aiming to deliver safe, compliant, durable, affordable and sustainable housing through the Victorian planning system via the application of ESD requirements in the planning phase. This provision of such new housing aligns with the overarching purposes of the SDAPP framework and the BESS tool and the accompanying ESD planning policies.

As of May 2021, 26 Councils across the Victorian CASBE Network proactively require ESD inclusion in new planning development. This covers a vast range of new homes, ranging from single dwelling extensions, multi-dwelling townhouse developments, apartment buildings to new housing subdivisions.

CASBE is however aware that there are significant barriers to improve Victoria's housing stock and that the objective *to deliver safe, compliant, durable, affordable and sustainable housing and buildings efficiently and effectively* is often impeded by poor on-site compliance and poor building quality. CASBE member Councils have explored this significant issue extensively. One member Council, Moreland City Council, conducted a 6-month research project investigating the compliance of ESD planning requirements during the construction phase. It found significant issues with on-site compliance and a common pattern of construction frequently not comply with the requires ESD measures. One problematic area including lack of energy performance measures such as inadequate glazing and insulation. Moreland CC also has a proactive ESD Planning Enforcement program which has, in operation for over two years, found substantial issues with on-site ESD and overall NCC building compliance. Similarly, Moonee Valley City Council has uncovered substantial lacking building quality when private water sensitive urban design and stormwater management measures are designed and constructed. Both examples serve to highlight the substantial issues the public sector faces with the quality of privately constructed homes.

Objective #2: To protect consumers and improves confidence in the industry and regulators

CASBE strongly supports this objective and recognised that currently there is little protection for consumers with respect to building quality and a lack of confidence in, and respect for, regulators. CASBE is well-versed with frustrating stories from consumers about the quality of new homes. Such examples include: new homes which are not built to the required ESD Planning NatHERS rating nor the NCC, resulting in parts of homes which are so hot during summer they are unusable; the installation of rainwater tanks in homes that are not connected to any gutters to collect water from, and no connection to internal or external services; bedroom and living room windows that barely open, resulting in a dangerous lack of natural ventilation; new homes built so poorly that within a year, they are actively collecting mould throughout bathrooms and bedrooms; insulation installed so poorly that the modelled energy rating is constructed to 2 or more stars below the Planning or NCC requirement; raingardens and guttering installed so poorly that houses and driveways flood in storm

events; and an overarching lack of homes being built which are performing and designed the way they were intended.

CASBE believes that registration of practitioners involved in the construction of housing should increase. Namely, builders and Private Building Surveyors need to more proactively audited by an independent authority to ensure that our future dwellings are appropriately constructed. The creation of a practitioner competence framework, such as minimum requirements for Victorian builders, is also strongly welcomed.

Objective #3: To support skilled and experienced practitioners to carry out compliant and safe practices

CASBE strongly supports this objective. For many years, it has been clear to CASBE and members Councils that a critical issue in the Victorian building and development sector is the absence of a framework intended to support design and building practitioners carrying out compliance and safe practices. A common example is the sign-off of dwellings which do not meet the required energy performance required by the Planning Permit. CASBE is aware that whilst the Planning Permit locks in ESD requirements including NatHERS ratings which exceed the NCC, Private Building Surveyor's frequently certify new homes which are much less than this required rating. Common reasons for this include a lack of understanding of the intersect between the NCC and Victorian Planning Schemes; lack of understanding or consideration of requirements of both of these systems; poor understanding of building and dwelling aspects such as the importance of glazing; and a lack of support for Private Building Surveyor's in this setting.

The creation of a supportive framework for building practitioners, such as a focus on education, certification, registration and auditing, would significantly help this issue. CASBE therefore welcomes the cited NSW approach of registering design practitioners and increasing oversight of building approvals (especially for Class 2). CASBE believes this would assist in the creation of a more compliant, overseen system, and assist Council's in their ongoing compliance duties. It would also facilitate the creation of tailored training programs and certification pathways, which are currently lacking.

Objective #4: To support regulators to effectively and efficiently enforce compliance

CASBE strongly supports this objective. For many years, CASBE has been astute to the issue that the majority of Victoria's housing sector has minimal compliance oversight from regulators (with respect to compliance with both the relevant Planning Scheme as well as NCC). Various CASBE member Councils have progressed investigations into compliance with required ESD measures during the construction phase. As above noted, Moreland City Council has a proactive ESD compliance program that has been in operation for 2+ years. Through this program, and other research, Moreland has uncovered significant non-compliances, across various styles of housing, which highlight that mandatory ESD measures (and aspects of the NCC) are being blatantly not complied with. This program and research have also identified that proactive compliance is a critical requirement to effectively and efficiency enforce compliance. Without such proactive measures, Council has observed an overwhelmingly lack of ESD, Planning and NCC compliance.

It is positive that the Review includes discussion of the various regulators that have monitoring, disciplinary and enforcement functions across the design, approval and construction stages. The discussion paper draws specific attention to the VBA and its core responsibility for regulating Victoria's building and plumbing industries. CASBE and its member Councils have proactively met with the VBA over recent years to discuss the issue of a lack of compliance during the construction phase and has generally received resistance and lack of enthusiasm over progressing this issue. Whilst CASBE respectfully understands the urgent nature of issues such as combustible cladding and non-conforming products, we also note that the lack of overall ESD, Planning and NCC compliance is a pressing issue. It is also important to bring together the various public institutions and regulators that have shared responsibility for regulating the building industry – CASBE notes that this is currently lacking.

Other relevant aspects

CASBE has long advocated that there needs to be a consistent and clear communication from the Victorian Government about the role of Councils and the role of the Registered Building Surveyor and the Private Building Surveyor. In the current state where there is a large disconnect between these roles, there is also a lack of understanding and presence of confusion over the legal and practical responsibility each party has in ensuring proper building practices and building compliance. This has therefore resulting in overall poor quality homes being built in Victoria due to little oversight of our housing construction sector.

CASBE also wishes to highlight that much of responsibility of ensuring Planning, ESD and NCC compliance borne by the responsibility of Local Councils (due the enforcement provisions under the Planning and Environment Act 1987, the Building Act 1993 (Vic) and Local Laws provisions in each Council). Victorian Councils are however struggling to adequately fund and resource necessary enforcement roles, especially in a rate capping environment which has been further exacerbated by the COVID pandemic. It is therefore opportunistic for this review to also include an assessment of the various enforcement bodies relevant to this Review within Victoria and explore the necessary funding for these bodies. Without accompanying proper enforcement, legislative changes and new registration practices may shall short of the intention of this Review process.

Conclusion

In conclusion, CASBE strongly supports the Panel and the Review and the important contents within the Framework for Reform discussion paper. The quality of our new homes is ever increasingly becoming more important. As highlighted by the COVID pandemic, our homes are not only a building in which we reside, but also a place for sanctuary, respite, work and shelter. Ensuring that new Victorian homes are safe, durable, affordable and sustainable are critical to not only improve liveability and amenity in our society however also essential to provide the minimum comfort that is expected of a modern and sustainable society.

The appropriate construction of our new Victorian homes is also essential to ensuring other aligning Victorian Government strategies are achieved. For example, the Victorian Climate Change Act 2017

and greenhouse gas emissions reductions targets rely on new (and existing) housing stock to perform at a much more energy efficient standard within a warming climate. Unless our building system is significantly reformed, we will not provide the housing the future Victoria needs and not meet our various aligning Victorian State Government strategies, goals and targets and obligations.

CASBE would be delighted to expand on any of the above. Please contact me if you wish to discuss this matter further on 9667 5555.

Yours sincerely,

Natasha Palich

CASBE Executive Officer

Notes:

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"CASBE Submission to Framework for Reform: Modernising Victoria's building system, May 2021" has been prepared by the CASBE staff at the MAV for discussion with CASBE member councils, and the State Government on reform to Victoria's building system.

CASBE is auspiced by the Municipal Association of Victorian (MAV). This submission is made on behalf of CASBE member councils and the views represented in this submission do not necessarily represent the views of the MAV. While this paper aims to broadly reflect the views of CASBE member councils, CASBE has a diverse mix of member councils and the views represented in this submission do not necessarily represent the views of all CASBE members individually.

Individual councils may also respond to issues specific to, and on behalf of, their communities. The CASBE staff thanks and acknowledges the contribution of those who have provided their comments and advice in the development of this submission.