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Subject: Townhouse code and inability to now consider known environmental hazards not in the planning scheme.
Date: Monday, 7 April 2025 at 6:04:22 pm Australian Eastern Standard Time
From: Katanya Barlow
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Attachments: image001.gif, image002.gif, image003.gif, image004.gif, image005.png

Hi **Personal Information**

Lovely to meet you last week.

As discussed, officers are very concerned about the changes that the Townhouse and low-rise code has brought in in relation to Council's ability to consider known environmental risks that are not yet in the Planning Scheme and would welcome a discussion with the relevant people in the Department about this and the best way to address it.

Prior to VC267, Council could rely on State and Local Planning policy and in particular the decision guidelines in the Planning Policy Framework, Clause 65 and Section 60 (1) (b), (e), (f), (1A) and (1B) of the Planning & Environment Act to consider these risks. This is no longer the case for applications for 2 or more dwellings on a lot as Clause 55 now explicitly states that these matters cannot be considered. The inability of councils to consider known risks could have significant implications for the safety of land use and development outcomes.

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

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

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

If a control must be in place for the risk to be considered in a permit application, the State Government should intervene as a matter of urgency (as they did with implementation of WMO or BMO controls in the wake of the Black Saturday bushfires) to help councils fast-track inclusion of known environmental hazards into local planning schemes. Another option would be for the State Government to amend the parent control of residential zones to include consideration of known environmental risks to circumvent the exemptions introduced by the new Townhouse code.

Looking forward to hearing from you.

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