

# TRANSCRIPT

## LEGISLATIVE ASSEMBLY ENVIRONMENT AND PLANNING COMMITTEE

### **Inquiry into Tackling Climate Change in Victorian Communities**

Melbourne—Wednesday, 4 December 2019

#### MEMBERS

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Mr David Morris—Deputy Chair

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Mr Tim Smith

**WITNESS**

Ms Natasha Palich, Executive Officer, Council Alliance for a Sustainable Built Environment.

**The DEPUTY CHAIR:** Welcome. I do need to just run through a couple of formalities, which we do at the start of every hearing. The evidence taken today will be recorded by Hansard. It is protected by parliamentary privilege, and what that means is that whatever you say in here is covered by that privilege, so legal action cannot be taken against you in regard to the evidence that you give. However, if you walk out the door and say the same thing, even though you have said it under privilege, that privilege does not apply. You will receive a transcript of your evidence in the next week or so to check and approve. Those transcripts will be published on the Committee's website and may be quoted in the final report, so when you get the transcript, if you can review it and come back with any omissions or errors that you think may be there.

Thank you again for coming this morning. Particularly for the benefit of Hansard, can you give us your name and title and then roll in to the presentation.

**Ms PALICH:** Okay, thank you. My name is Natasha Palich. I am the Executive Officer of a group of councils known as CASBE; that stands for Council Alliance for a Sustainable Built Environment. I am a practising architect and have been working in local government for the last 15 years. CASBE is an unincorporated governance structure auspiced by the MAV. It was formalised in 2009, but the councils involved have been working together since around 2004, very specifically focused on getting more sustainable outcomes in the built environment in the private sector and using the planning system to achieve that. We have grown substantially since the start, which started off with a couple of councils involved. CASBE is largely an opt-in process; councils can choose to be part of our network and choose to be part of the membership as they get to the point where their policy position aligns with the CASBE position. Our network reaches more than two-thirds of Victorian councils. At the moment we have 32 financial members, which has grown by about six councils over the last 12 months.

We have four main points to our submission. It is seeking support from the State Government to enable the work that CASBE does. Specifically the work that CASBE does is we work with the development industry as they come to council for a planning permit and we request and assess sustainability information about that development and seek better outcomes through the permit process. I will go through our four main points. The first one is that we think there needs to be a stronger alignment between the *Climate Change Act* and the *Planning and Environment Act*. The *Planning and Environment Act* does refer to ecological and sustainable approaches, but it does not refer to climate change. With more councils declaring a climate emergency—I think of the 21 councils in Victoria that have declared a climate emergency 13 of those at the moment are our members—mitigation and adaptation and community resilience to climate change is first and foremost for those councils, so we would like to see a stronger connection between the climate change and planning and environment Acts to support the work that we are doing.

The second point that we are making is that we would ideally like to see a state ESD policy. We know that DELWP has been working on this for some time. I will give you some background to this. I mentioned that councils started working together in 2004. In 2009 a number of councils formally applied to DELWP to seek a local policy. I will call it an ESD policy—that now stands for environmentally sustainable development policy. At that time there was a little bit in the state planning scheme referring to environmental outcomes in buildings but not a lot. The local policy sought to provide a greater level of detail on what that might entail. In 2015 six of those policies were gazetted and since that time there have been another 12, so there are 18 identical policies requiring detailed information to be submitted at the planning permit stage. This shows support from State Government for this work. It provides support for councils to ask for that information. However, the challenge is that the councils that mainly have those policies are the more well-resourced councils, so we have our rural and regional members and network members who might hold the same position in terms of declaring a climate emergency but do not have the resources to go through that planning amendment process.

I will just talk a little bit about the local ESD policies. They went through in 2015 and they are triggered, for equity reasons, by triggers established by the councils for two or more dwellings. So they exclude single dwellings because they are not always subject to a planning permit. Some councils have triggers for three or

more dwellings. I think there might be one that has a trigger for 10 or more dwellings. The triggers are set by the councils, but let us say for argument's sake that they are two or more dwellings. For non-residential it is about 100 square metres and up in terms of area. One of our rural members did an analysis of the planning applications that come through in a year, and they found that there would be, let us say, 20 to 30 applications in this rural council that would be triggered by those triggers. They felt that the existing planners on staff would be able to deal with the referrals process of asking for and receiving that information; however, what they did not have was that expert ESD advice in council to provide feedback to the planner on whether it was a suitable submission or not. So leaving aside the resources required to get the planning amendment in the start, they also need that expert expertise.

The city of Bendigo at the moment are managing a project where they are working with a number of their adjoining councils on working out how to structure a shared resource of sustainability advice, not only for planning referrals but for community information and council operations as well. So we are hoping that what we can see is a couple of models where councils can either share resources or combine to buy a resource that can provide them with that service so that it enables some of those rurals and regionals to opt in to this process. So for that reason I think we are of the view that a state ESD policy is always going to be a better scenario because it will take away that requirement for councils to seek their own amendment.

We are working with officers in DELWP to try and align our work. However, with our members declaring climate emergencies and the ESD policy that currently exists being written a decade ago, there is the view amongst the councils that it now needs to be updated. The language of the existing policy is primarily around mitigation as opposed to a thorough consideration of how buildings and the built environment can adapt to what we are going to be needing in a future scenario.

Also we think there is probably a better consideration of community resilience and human resilience in our buildings, particularly in terms of providing havens in heatwave events. There is a group of councils that are now actively working on a stronger, more forward-looking, more climate-resilient approach to an ESD policy. At the moment we have councils that are still seeking that original policy and we have councils that are presently working on upgrading that, and the State Government is also working on something.

I mentioned in our submission that a number of our members have zero carbon targets and they have those zero-carbon targets for their communities. The date ranges for those targets are from a very ambitious 2020 to 2050. Earlier this year our group of councils committed to a position on energy efficiency or energy use in buildings with the objective that we will work together to seek carbon-positive buildings as soon as possible. We are working through what that means, but certainly we feel that the current state target of zero emissions by 2050 would need to be brought forward.

The State are working on a state ESD policy but they will be working to the current state targets. So a state policy that incorporates the consideration of energy use in buildings will consider that 2050 zero emissions target, whereas the CASBE position is that it probably needs to be an earlier transition to zero carbon. I am not sure, even if DELWP at the moment was able to progress the state policy, whether the two approaches would align, and that is largely because of the state position. They can only work to that. However, from our perspective as secretariat of the councils it would be of greater benefit if it was applicable to all councils, because then our work would be mainly on supporting those councils to have the resources to enable that.

I guess we have seen that recently with the gazettal of the water sensitive urban design state policies that occurred in October last year. So that draws on some of the work that councils have done over the last decade or so in water-sensitive urban design, which is part of the ESD policy as well. That is now a requirement for all councils to consider. We are not sure that councils are considering it. DELWP is working on a suite of resources for that, and part of what we are trying to do is enable the lessons and the learnings and the experience that the CASBE councils have from the last five years of having an ESD policy and applying that across the state.

Councils call this process of asking for and receiving and assessing sustainability information SDAPP—*Sustainable Design Assessment in the Planning Process*. Our main role is to ensure that councils are applying this methodology in a consistent way. As an architect, as a development industry you do not want to be going to different municipalities and having different requirements across the borders of each municipality. One of the

ways that we enable consistent application of this is through a piece of software that councils have developed with funding from the State Government. This is called the Built Environment Sustainability Scorecard—known as BESS. It is an online building sustainability assessment tool.

In our submission we commended that tool to the State Government, and we would like to see this used as a platform across Victoria for assessing the sustainability of buildings. Our goal as councils is to lift all of the development up to a level of performance. In the green building industry you have organisations like the Green Building Council of Australia and their Green Star tool—that is targeting the top end of the market. What we are about in the councils is enabling all people to get better buildings, more comfortable, more affordable in the long-term with a lower impact on the environment.

**The CHAIR:** Can I just pick up on that point? Certainly I am pretty sure everyone sitting on this side of the table is very comfortable with the idea of making homes as energy efficient as possible. It is long-term good economics for those that might live within those houses. One of the wicked challenges about this particular issue, though, is that the up-front costs go up, and that makes housing affordability more challenging, more difficult. So it is a wicked problem. Has there been any work done which shows that using modern building techniques you can achieve these outcomes with, effectively, very little up-front cost and that therefore all of the benefit is enjoyed without reducing housing affordability?

**Ms PALICH:** Yes, there has. In fact the State Government has been doing some of that work. I mentioned that these policies exclude single dwellings. For many councils that is a big problem because the bulk of their development is those greenfield subdivisions. Sustainability Victoria have a program called zero carbon homes. They have been working with mass building developers to produce a zero-carbon home. After a period of time they were able to get three, I believe, companies to participate in the program, and one of them was able to produce a zero carbon home for an extra \$10,000. In the program I think there was a pilot phase where the building company actually said that they would offset \$5000 of that. So for \$5000 they were able to produce a building that was zero carbon, and that is through a combination of strategies.

If you think about the energy use in a building and the strategies for dealing with that, you can address the envelope—the performance of the envelope of the building—you can address the efficiency of the appliances and fittings that go into it, you can put renewable energy onto it so that it produces energy, but then the last thing, which we cannot really control, is how it is used. People will have different views on how you achieve the best solution for the user to use the building most efficiently. Personally I think that it is somewhere between a really good envelope around 8 stars perhaps and then it is some renewable energy, and I think that that is what has been achieved in this instance. So yes, there are actually many examples where you can demonstrate that there is that up-front cost.

**Mr FOWLES:** What things do you think Government could or should be doing to either encourage or mandate those sorts of outcomes?

**Ms PALICH:** You can probably tell from my history in local government that I think for a sector of the community, regulation is the only way you are going to do that, hence why we are sitting there. We have had feedback—this is anecdotal feedback—from the development community that they do not really mind what is asked for so long as it is consistent across the board. A part of what we do is we are trying to change things building by building, but we are also trying to change the system. The whole green industry is trying to change, so you weed out the inefficient products, introduce mandatory labelling for all appliances—at the moment there are some exclusions like, for example, heat pumps, which is a transition towards an electrical house which you can fully offset. They are yet to be labelled. You can support the structures, I guess, that go into creating a building.

And then the final point to my submission is that you can make sure that people actually do it. As you would be aware, there is a verification compliance issue across the industry, not just to do with sustainability issues. Councils are starting to work in this area. Over time we have been looking mainly at the first stage of that, which is documenting what has been committed to in the project, but what we have been finding and what the councils have been finding is that often what has been committed to at planning stage does not make it through to the building permit documentation, and if it does, it then does not make it through to what is actually built on site, again not an issue unique to sustainability initiatives. Councils are starting to implement a verification

process where they are training up their planning enforcement officers to actually look at the sustainability strategies that were committed to and make sure they were put in.

**The CHAIR:** This is an interesting problem. You have got the *Climate Change Act*, and you have talked about that. You have got the planning arrangements and the planning act; you have talked about those arrangements. And then you have got, I think, the *Building Act*, which is how you regulate the industry and all of that. You have made an argument about two of those being put together. In thinking about the problem you have just described, is it worth actually thinking about the three sets of regulations potentially being put together so that the planning permit is consistent with good environmental outcomes and climate change outcomes and the building arrangements spelled out in the *Building Act* are coupled in with that so that you have to deliver exactly what it was that you said you were going to do when the permit was granted? What are your thoughts on that? I do not know if I have put that particularly eloquently.

**Ms PALICH:** No, I know exactly what you are saying. I will make a few points to that. Firstly, the point at which we ask for sustainability information is at what you would call the detailed design stage of the development, typically. In terms of the stages of building procurement, you have got your concept design and your detailed design, you document it and then you build it in terms of the design process. It is at that detailed design stage these days that you would submit to council. That is where the decisions about windows, orientation, placement, site layout—everything—is made, so it is conceivable and reasonable to ask a person to consider all of these things at that stage. That is the first point.

The second point is that in Victoria there is less alignment between the planning and the building regulation than there is in other states. I certainly think that they could be brought together to work more effectively together. New South Wales has an approach that does that. They use BASIX, and they have a set of sustainability requirements that you consider at planning if you need a planning permit. If you do not need a planning permit, then all of the considerations are considered at building. It is a more streamlined process than what it is in Victoria.

**The CHAIR:** Is it more efficient? Does it lead to a cheaper outcome for, ultimately, the person building the house, the owner client?

**Ms PALICH:** I do not know, but what I do know in Victoria is that the information between planning and building is lost with regard to the sustainability requirements.

**The CHAIR:** Just in a practical way, between the planning permit and the building certificate being issued, does that give people the opportunity to exchange out their energy-efficient 5-star products or whatever with then lower star products? Has that been happening?

**Ms PALICH:** There are two things that are happening. You go from the planning permit documentation to the building permit documentation, and in that process there is detail that might be lost, and then once you get on site, even with the building—

**The CHAIR:** More details lost?

**Ms PALICH:** There are energy efficiency requirements in the building regulations, and there is anecdotal evidence that even that requirement is not being realised in the construction process. So there are two phases: between the planning permit documentation and the building permit documentation, and then in the construction process. This discussion is sort of a stepping aside from planning, but industry have been advocating for a new verification regime during the construction process to test some of these things. Because at the moment there are typically four points where the building surveyor will go on site, and they will assess things that relate to the building code. They will assess things relating to sustainability only as it pertains to the building code requirements, not as it pertains to planning permit conditions. So therefore the onus comes back onto council to check during that construction process that the commitments made at planning are being realised on site.

**Mr MORRIS:** Just on that, you said ‘building surveyor’ but presumably you are talking about building inspectors as well.

**Ms PALICH:** Building surveyors—they are the ones that issue the building permit in Victoria.

**Mr MORRIS:** Yes, but generally they are represented on site by an inspector rather than attending the site themselves. That is what I am asking.

**Ms PALICH:** That is what I mean, yes.

**Mr MORRIS:** Yes. With your professional hat on, do the inspectors/surveyors have the skills to objectively judge what is required? Presumably if they are appropriately qualified, they can make assessments against the BCA, but in terms of the other requirements, are the skills there, are the qualifications there, to make those judgements?

**Ms PALICH:** I think they are capable of it. Whether they have had time to incorporate that into their skill set is another thing.

**Mr MORRIS:** But there is no professional requirement for them to have those skills, I assume.

**Ms PALICH:** Not at the moment. There is no requirement for them to inspect the sustainability initiatives that council might apply above and beyond the building code requirements.

**Mr MORRIS:** Yes. Okay, thank you.

**The CHAIR:** Just thinking through that, so a modern surveyor going through—is it TAFE based or university based?—but anyway either way—

**Ms PALICH:** It is a degree.

**The CHAIR:** Degree based, so those provisions at the moment are not taught in terms of the degree?

**Ms PALICH:** I do not know. I do not know about the content of the building surveying degree, but at the moment it is not a requirement for them to assess anything other than the sustainability requirements in the building code.

**The CHAIR:** Okay.

**Ms PALICH:** Although what councils have been relying on has been that it is the building surveyor's responsibility to ensure that the building permit documentation is consistent with the planning permit documentation, and so the focus of councils has been to get all the information on the documents to say, 'Yes there's a rainwater tank', 'Yes, there's this, yes, there's this', and then that is meant to be transferred to the building permit documentation. If that is the approved set of documents, then in theory that is what should be built and that is what should be picked up by the building surveyor.

**Mr FOWLES:** Two things coming out of that. There is lots of anecdotal evidence about builders pricing jobs on a no-profit basis and then value-managing through the process to actually create their margin. Is there a way that you can think of to disincentivise that or to make sure that the value management process is not just done at the expense of the typically more expensive, higher quality ESD component? The second thing is: what regulatory lever would you consider to be the best to bring ESD into the certification matrix, at whatever stage you think?

**Ms PALICH:** Look, CASBE does not have a position on this, but the options that exist are to introduce a new compliance regime. The other thing that is being talked about with—

**Mr FOWLES:** As in a separate and additional regime or to add new components to the existing regime?

**Ms PALICH:** Either or both.

**Mr FOWLES:** Okay.

**Ms PALICH:** There is talk of doing what is called blower door tests, which is when you will go into a building after it is constructed and see how much air leakage there is, which really only determines the performance of the envelope. The tool that we look after, the Built Environment Sustainability Scorecard, is what we call a predictive tool, so its base is as a predictive tool, and Green Star used to be a predictive tool too. Predictive tools highlight the potential of a building to achieve these outcomes. NABERS is an Australian tool and it is a leading tool based on actual performance. A shift to buildings having to demonstrate their actual performance would be the regulatory outcome that would see change, but incorporating a checking mechanism at the occupancy permit stage so that the builder can rectify anything before moving off—on things that you can do like looking at the invoices of the products that have been put into the building, doing the blower door test, ensuring that all the elements are on site.

**Mr FOWLES:** So part of that is a desktop exercise but part of it is a physical testing regime?

**Ms PALICH:** Yes. But then backing it up with a performance test 12 months down the track.

**Mr FOWLES:** Any idea how much that would add to the cost of the build?

**Ms PALICH:** I would have to take that question on notice.

**The CHAIR:** Just picking up a little bit on that. So obviously part of thinking about the problem of housing affordability and the other problem of making housing as energy efficient and climate responsive as possible, in dealing with both of those things there is an inherent cost. So one of the ways that we can potentially achieve both is setting up efficient regulation and efficient processes where it is done as efficiently and effectively as possible so that we can achieve both a really climate- and energy-efficient house and also not add to the overall cost, which means that housing remains, as much as possible, affordable for particularly working families. In looking at the three pieces—the climate Act, the planning arrangements and the building arrangements—do you think there are some efficiencies that can be achieved through efficient regulation and effective regulation that will enable both the problem of housing affordability and climate change to be achieved? Do you think there are some costs that can be freed up?

**Ms PALICH:** Look, I will have to take that on notice to give you a thorough response I think, if I can.

**The CHAIR:** Absolutely.

**Mr MORRIS:** I just want to come back to, in terms of the ESD policy, whether it is a state policy or a local policy. I am just wondering. You have told us you have got 32 members. I do not have any appreciation of the diversity of those members both geographically and stages that they are at in terms of size, capacity, resources—all that sort of stuff. So I guess I am really wondering, if we are to move to a statewide policy, whether that is going to be as effective given the diversity that we have in our councils and the diversity of responses required in the Mallee versus in South Gippsland, for example.

**Ms PALICH:** That is right, yes. And that is something that DELWP planning is grappling with, because I think one of the concerns is they do not want to introduce a policy that councils will then find it hard to effectively implement. One of the things that we have been talking about recently, the BESS tool, considers different geographical locations in terms of the climate for the performance of the envelope but also in terms of the rainfall data for water use and stormwater considerations, but it is a tricky problem. Take for example stormwater treatment. We consider the flow of water from site due to the quality of water leaving site and the impact on local waterways. A good solution to stormwater will differ depending on what catchment you are in, depending on the soil type and the geological base of where you are. So we think that there is a need to have localised design responses, but the objectives that you are trying to achieve would be the same, because you are trying to achieve good outcomes. How you get there would depend on not only the context but what you are trying to do. So what we have tried to set up—as much as possible; I do not think we have solved that localised problem—is an assessment method where we say, ‘We’re not going to tell you what to do. We’re going to give you a series of options and there is a performance outcome that we would like you to achieve, and you will choose which way you get there because it will depend on what you are trying to do’. That is what we have done.

**Mr MORRIS:** So you set up a framework to say, ‘Well, this is where we are trying to get to, and this is the framework that we use to—

**Ms PALICH:** Ultimately when you raise that target and say, ‘Let’s say we’re trying to achieve zero carbon buildings’, well, then you narrow the options because you are going to have to do more of them to achieve that outcome. But still it is a design response; it is a response by the expert team that are considering that particular project in that particular context with those constraints and opportunities.

**Mr MORRIS:** Can I just ask, and it is sort of a continuation of that line, but it is a tangent—that does not make any sense, but anyway. You will see what I mean in a sec. We have had discussions with a number of councils, in one case with the CEO but in other cases with people more in the climate area, and there is I think general agreement that there is going to be a significant impact on infrastructure. In my own patch, the area I live in, we have had two 100-year floods in the last decade, and that is going to keep happening. The comment has been made that while there is an understanding of the impact at the climate change officer or environment officer level, and it is probably starting to be a higher priority for the engineers, once it gets to the accountants that is where it stops. Is that something you are seeing with your member councils?

**Ms PALICH:** I think there is a growing awareness of the economic implications of climate change risk in councils and potential liability risks also of councils, particularly with how they are managing land. I have heard of councils who have had residents threaten to combine in a class action because of the flooding of a newly zoned residential subdivision.

**The CHAIR:** In terms of that context, I am assuming that is where a contemporary infrastructure has been put in, as opposed to something that recognises—

**Mr MORRIS:** 1970s or 1960s sort of thing.

**The CHAIR:** Yes, recognising that we are going to get probably less rainfall, but when we do get it, it might be more intense, and we are going to get more 1-in-100-year floods and we need bigger pipes.

**Ms PALICH:** I see councils playing a little bit of catch-up in this situation. I will give you an example. We have recently put in a building permit for a project—it did not need a planning permit—but when it came to getting that building permit, council had a flood overlay that had not yet made it to the planning scheme, so it was not visible unless you actively went looking for it. So I think that councils are doing this flooding work—I take that as an example—but it is yet to make it into the planning scheme. One of the things that a number of the greenhouse alliances are considering along with CASBE is the consideration of climate resilience and adaptation and what that means. I do not think we have fully investigated or defined what a climate resilient or adaptive built environment is, but I think that we need to. I think that that is part of what this work is that the council is doing—this more contemporary version of the ESD policy we are seeking to do. What is it that we are looking for in terms of safety for humans and buildings being able to adapt? And stronger mitigation, which is what the policy currently really is. I think that councils do need support in that area to define that more effectively and understand the implications of what is going to happen, particularly on their liability, which I think is the biggest risk.

**Mr FOWLES:** So would it be possible to just put a performance standard into ResCode as a mechanism by which that automatically picks up all the building surveyors and picks up all the houses that can be certified without going to council?

**Ms PALICH:** There are two schools of thought on this. You can put in a performance standard or you can put in quite specific requirements, so you can put in an objective or a standard that you are trying to meet or you can say, ‘You need to achieve X, Y and Z’. The difficulties or one of the challenges with councils using the planning scheme to put in ‘We would like you to have EV infrastructure; we would like you to have this many or this level of water efficiency or a rainwater tank or whatever it is’, is it takes quite a long time for the planning scheme to be changed. If you are putting in objectives, then you can say, ‘Well, we want you to achieve what we would call best practice’, which is what the policy does now. Best practice can change over time, and you can keep your definition of best practice contemporary without needing to change that policy mechanism.

**Mr FOWLES:** But in terms of meaning that surveyors have to sign off on something being ResCode compliant or otherwise, could that be a mechanism to bring in all of these single dwellings as a lever for Government?

**Ms PALICH:** In theory. The building code is a national code.

**Mr FOWLES:** I appreciate that.

**Ms PALICH:** But you can have state variations to it, as we have. Let me think on that and I will get back to you.

**The CHAIR:** I am just thinking through the flooding issues and the little example you used a little earlier. There is capacity, I think, for the planning Minister to insert a statewide provision or a geographic provision which might go across a number of municipalities. Have you got any thoughts around how we might urge, for want of a better term, the planning Minister to use his capacity to insert some of these things into the planning scheme to fast-track councils responding to these challenges across the whole state?

**Ms PALICH:** Well, we have—

**The CHAIR:** I am thinking particularly of flood overlays and the type of infrastructure that will need to be put in place as opposed to existing engineering practices that have been around for however long.

**Ms PALICH:** Are you talking about buildings or large-scale infrastructure?

**The CHAIR:** No, I am talking about the type of infrastructure owned by councils, so drainage and those kinds of things.

**Ms PALICH:** Our focus is more on buildings. In terms of putting in state requirements for buildings, I think that what we have with the CASBE group of councils is 15 years of examples of how it can work and the fact that we have shifted an industry to the point where most metro council—to answer your earlier comment—members are actively engaged in this framework, and a scattering of one or two regional. So you have that case idea of how it can work, and we have reported to DELWP on this in the past, and the benefits. But in terms of your question, I will not respond to that, no. I am more about buildings.

**The CHAIR:** That is fine. Thank you; I appreciate it. Did you want to make any parting comments?

**Ms PALICH:** No, I think we have covered it all.

**The CHAIR:** Fantastic, thank you.

**Witness withdrew.**