

Your Council and Climate Change

UNDERSTANDING THE RISKS AND LEARNING TO ADAPT

Local government roles and responsibilities

Training for Victorian councillors,
supported by DELWP and
developed in partnership with



Key messages



Local governments have legislated responsibilities to address climate change

- The new *Local Government Act 2020* strengthens local governments role on climate change
- Decision makers have a duty of care
- Failure to act may leave Council open to claims of negligence
- Climate change must be considered in your municipal public health and wellbeing plan
- Use the Planning Scheme and strategic planning processes to respond to climate change
- Seek your own legal advice where necessary



Meeting these responsibilities requires a “whole of council” approach

- Climate change action needs to be embedded across all strategic planning
- Action is needed from the top – from all decision makers
- It's not just the responsibility of the environment team, it's a whole of Council responsibility

The long-term consequences of climate change – including for future generations – must be incorporated into decisions and actions of council.

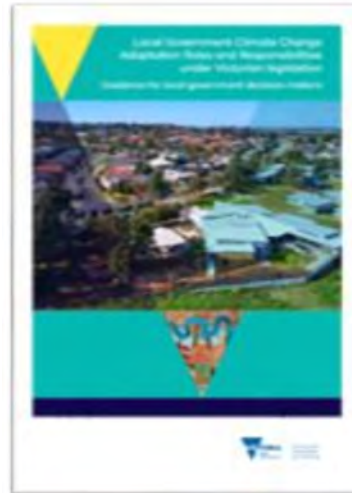
The state government has produced a guidance document for local government on their legislated roles and responsibilities on climate change. This guidance was developed based on expert legal review and the outcomes from four consultation workshops held with local government in different regions of Victoria in 2019. It is essential reading for all decision makers.

The content of this presentation is not legal advice - you must seek your own legal advice.

Legislated roles and responsibilities

Local Government Act 2020

Councils are required to promote the economic, social and environmental sustainability of the municipal district, including **mitigation** and **planning for climate change risks**.



The role of a Council is to provide good governance for the benefit and wellbeing of their community.

As shown on the slide, the Local Government Act 2020 requires Councils to promote the economic, social and environmental sustainability of the municipal district, including **mitigation** and **planning for climate change risks**.

Other relevant overarching principles include:

- Councils are required to give priority to achieving the best outcomes for the municipal community, including future generations.
- Regional, state, and national plans and policies are to be taken into account during council's strategic planning.
- Council must ensure its decisions, actions, and information are transparent.

There is a clear expectation that decision-making is supported by robust and transparent practices, and that the long-term adverse consequences of climate change for future generations are incorporated into council planning, decisions and actions

Duty of care

“Statutory authorities, including local government, have duties of care in exercising their functions and powers. At law, a failure to effectively discharge your duty of care may give rise to a cause of action against you...”

(DELWP 2020)



As the threat of climate change is now represented in legislation, national and state policy and international agreements, it is more likely a court will see the risks and impacts of climate change as reasonably foreseeable.

Three fundamental messages relate to risk and liability management:

- First, statutory authorities, including local government, have a duty of care in exercising their functions and powers to manage foreseeable risks.
- Secondly, climate change hazards and risks may be significant and foreseeable, so decision-makers are accountable for considering these matters in making a decision as part of exercising their duty of care.
- Thirdly, good decision making is enabled by acting as a ‘reasonable person’ in making decisions guided by law.

Councils have a duty of care in relation to climate change adaptation – this has been established in Victoria through VCAT since 2010, and in other jurisdictions. **Because of this duty of care, councils may be open to claims in negligence.**

For local government, a duty of care may arise in relation to:

- development approvals

- the provision (or lack thereof) of protective works
- or the provision (or lack thereof) of information or statements which are considered by a court to be negligent.

Council's duty of care requires that it undertakes **due diligence**.

How to demonstrate due diligence

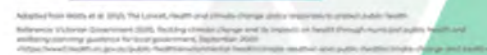
- Follow a rigorous process for higher risk decisions
- Undertake effective consultation
- Ensure the relevant information that led to the decision is accounted for and appropriate records maintained
- Make the information that has led to a decision publicly available.

(DELWP 2020)

To demonstrate due diligence, it is advisable that councils:

- follow a rigorous process for higher risk decisions, such as Australian Standard AS 5334-2013: Climate change adaptation for settlements and infrastructure – a risk-based approach
- undertake effective consultation with experts and their community around specific decisions
- maintain appropriate records and make the information that has led to a decision publicly available.

(DHHS 2020)



climate change through their health and wellbeing plans

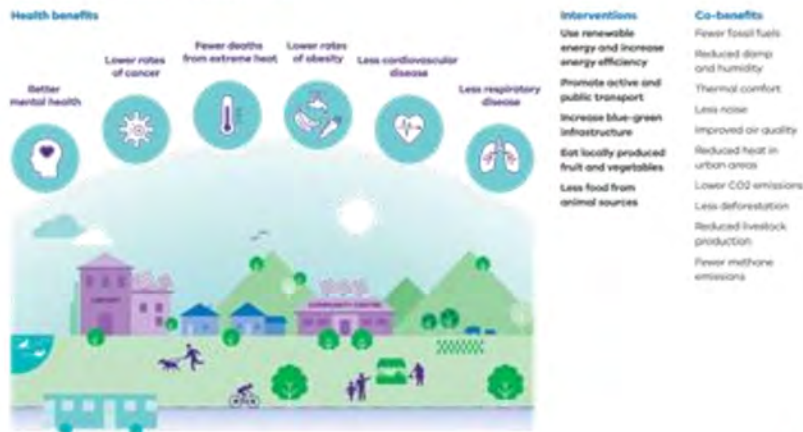
The guidance steps through the planning cycle and includes internal and external engagement, implementation and evaluation.

[Provide a copy of this guidance document -

https://www.climatechange.vic.gov.au/__data/assets/pdf_file/0030/490476/Local-Government-Roles-and-Responsibilities-for-Adaptation-under-Victorian-Legislation_Guidance-Brief.pdf]

Health benefits of taking action on climate change

Climate change and health co-benefits



Adapted from BMJ 2018; Health and climate co-benefits

Reference: Victorian Government 2020, Tackling climate change and its impacts on health through municipal public health and wellbeing planning guidance for local government, September 2020
<https://www.health.vic.gov.au/public-health/documents/health-climate-wellbeing-and-public-health/climate-change-and-health>

The guidance also highlights the co-benefits of addressing climate change – as shown here.

An example is the Healthy Homes project, run by Sustainability Victoria in partnership with Victorian councils. People with complex health needs and low incomes in Melbourne's western suburbs and the Goulburn Valley were provided with home energy efficiency upgrades. One avenue of recruitment was through local government – particularly through home care support services.

The project aims to help residents adapt to climate change by finding it easier to cool their homes (so helping those more vulnerable to health issues in heatwaves) and reduce electricity bills so be able to afford to heat their homes in winter.

The Victorian Planning System

- Climate change impacts (natural hazards, coastal inundation and erosion)
- Planning for places (greenfield planning to respond to climate change)
- Agriculture (adaptation to climate change).
- Energy and resource efficiency
- Integrated water management



The purpose of the Planning and Environment Act 1987 is for the planning framework to support decisions in the 'long-term interests of all Victorians'.

It establishes broad objectives for planning in Victoria that are relevant to climate change responses, including:

- sustainable land use and development
- the protection of biodiversity and natural resources, and
- the maintenance of ecological processes.

There are also a range of clauses focussed on planning responses to hazards such as bushfire, flood, erosion and heat.

Through Local Planning Schemes, councils can incorporate climate change adaptation through their Municipal Strategic Statement, Local Planning Policy and specific planning controls such as a schedule to a zone or an overlay.

Planners must take into account:

- Climate change impacts (natural hazards, coastal inundation and erosion)
- Planning for places (greenfield planning to respond to climate change)

- Agriculture (adaptation to climate change).
- Energy and resource efficiency
- Integrated water management

The roles and responsibilities guidance suggests ways to incorporate climate change adaptation decisions into planning, via:

- being pre-emptive and precautionary in responding to climate change
- communicating climate change adaptation within your community
- incorporating climate change adaptation across all aspects of planning.

City of Greater Geelong

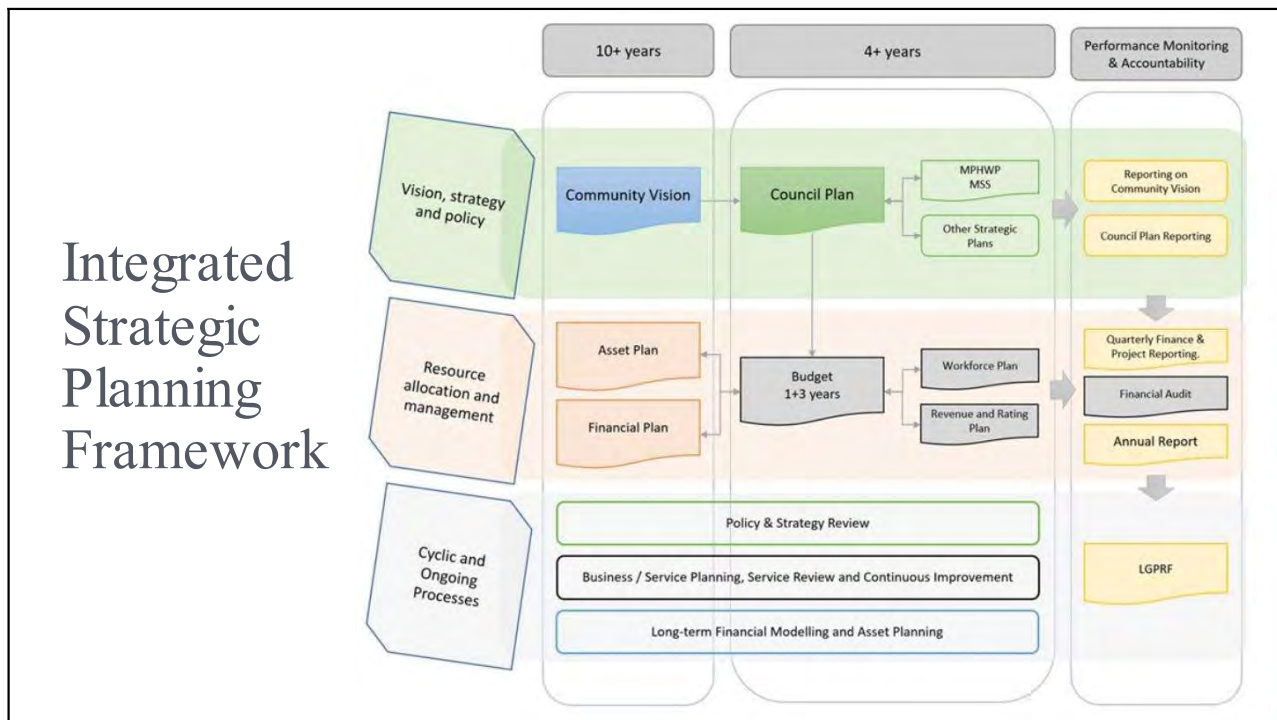
Coastal hazard and inundation risk considered in planning decisions on land subject to current **and** projected future coastal inundation

Amendment to the Greater Geelong Planning Scheme
– coastal inundation controls



The City of Greater Geelong implemented updated planning scheme flood controls through a local planning scheme amendment in 2020. It will apply to 1,614 coastal properties on the Bellarine Peninsula and Corio Bay.

The amendment ensures that coastal hazard and inundation risk is considered in planning decisions on land subject to current and projected future coastal inundation.



As shown in the case study about the City of Greater Geelong, land use and development decisions allow for individual responses. However, on their own, they don't allow for a broader response.

The Integrated Strategic Planning Framework as outlined in the Local Government Act is an opportunity to build resilience across the whole community and implement a strategic process to respond to climate risks.

Strategic, long-term, integrated planning will ensure actions work together and complement one another. It is also critical to ensure that councils are resourced to respond to climate change. Looking at the planning framework through a climate change lens means embedding climate change across the council – climate change is not just the environment team's responsibility but the responsibility of teams across the organisation to ensure they carry out their work in a way that considers climate change impacts.

Council Pledge

You are invited to submit a voluntary council pledge, under the Climate Change Act 2017.

Pledges acknowledge the substantial work being undertaken by local government.

There is no deadline and no set template. Pledges may include:

- Emission reductions, adaptation and risk
- Council operations and the broader local community
- A climate action plan, actions list or statement
- Individual councils or groups of councils

Resources for estimating emissions and examples of existing pledges:
climatechange.vic.gov.au/local-government/council-pledges

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