



ORDINARY MEETING PM006 ADDENDUM

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MONDAY, 10 SEPTEMBER 2012

SECTION 8 – LATE REPORTS

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Item 8.1. Reformed Zones for Victoria

- Report 162

Addendum as at Monday 10 September 2012.

8.1 Reformed Zones for Victoria

(A1325969) (FJ:A/GMD)

Executive Summary

Victoria's Planning Minister, Matthew Guy, announced on 11 July 2012 that planning zones are being reformed to ensure that they are still relevant and adequately reflect the aspirations of all Victorians. The media release was titled – "*Planning zone reforms to target productivity*". The Minister has sought community feedback until 21 September 2012. Unfortunately this has provided limited time for community and Council consideration.

The changes proposed consist of:

- Amendments to existing zones; and
- The creation of new zones.

The new provisions make very significant changes to existing zones and the new zones also introduce very significant changes to the planning framework in Victoria. The majority of zones are impacted with the main focus of the reform affecting residential, business, industrial and rural zones.

Consultation with the community has occurred via a number of Council Committees, Council's web site and a public information meeting on 4 September 2012.

DPCD have indicated that feedback is sought on the content of the zones and secondly on the implementation process. This report considers the impact of the proposed zone changes that will guide our submission to the Minister, along with views as to how the changes should be transitioned and their timing.

The Minister has indicated that the zone reforms seek to:

- Simplify requirements and to provide greater certainty (particularly in residential areas);
- Allow a broader range of activities to be considered; and
- Improve the range of zones to better manage growth.

The Minister has indicated that the implementation of the zones will be in October 2012 with a further 12 month implementation period to consider where new residential zones should apply.

The key concerns are:

- Increased uncertainty and reduced productivity and therefore delays in decision making due to many of the users being subject to a planning permit.
- The blurring of the hierarchy of zones and land uses limiting the capacity to appropriately plan for future growth and directing land uses to appropriate locations;

- Creep of proposed activities without the need for a planning permit which are inconsistent with the underlying purpose of the zones; and
- Inability to direct uses to ensure sustainable levels of amenity, liveability, economic activity and prosperity.
- Direct translation of business zones to commercial zones does not fit with the strategic justification, particularly the Business 5 Zone along the Nepean Highway and north of the CAA. Council should have time (approx 3 months) to nominate other appropriate zones.
- The strategic work and justification required to be made by Council's during the implementation process and the impact this will have on resources.

Background

On 11 July 2012, the Minister for Planning released details of a proposed Zone Reform package, which includes significant changes to the residential, business, industrial and rural zones of the Victoria Planning Provisions applicable to all planning schemes in Victoria. The Minister stated that:-

“ Planning zone reforms are vital to maintaining Victoria’s competitive economy, and growing the productivity of our retail and commercial sectors.”

“ These reforms will place Victoria at the forefront of commercial development and employment.”

“ Planning zone reform (will) improve productivity and jobs in our commercial and industrial sectors while providing greater certainty in our residential areas.”

Advice from DPCD has provided some context around the proposed reform:-

- Commitments made as part of the Government’s policy platform prior to the last election;
- The Victorian Planning System Ministerial Advisory Committee interim report (December 2011);
- The (Australian Government) Productivity Commission report on Economic Structure and Performance of the Australian Retail Industry November 2011;
- The Victorian Competition and Efficiency Commission (VCEC) Inquiry into Victoria’s Regulatory Framework 2011; and
- The VCEC Inquiry into Victoria’s tourism industry 2011 (final report and government response still to be released).

A summary of the proposed zone reforms as made by the government is provided in the attachments.

Issues and Discussion

Section 1 - Key Concerns in relation to the proposed reforms

Blurring of zone hierarchy / Removing the land use hierarchy

The proposed changes to the zone controls allow for a wider range of uses both as of right and subject to permit. Whilst the general reasoning for the proposed changes is acknowledged, in a number of instances the proposed changes lead to a blurring of the hierarchy of the zones and land uses limiting the capacity to appropriately plan for future growth, through directing land use to appropriate locations.

The proposed changes to the new Residential and amended Industrial zones have the potential to limit the capacity to holistically plan for the future growth and development of our city through:

- Creep of proposed 'as of right' activities which are inconsistent with the underlying purpose of the zones; and
- An inability to direct the appropriate mix of land uses, ensuring sustainable levels of amenity, liveability, economic activity and prosperity.

Residential zones

The key primary area of concern in relation to the blurring of zone and land use hierarchy relates to the introduction of as of right commercial uses within the new residential zones, and in particular allowing:

- Medical centres with floor area of 250 square metres or less, as of right in all residential zones; and
- Shops and offices as of right in the GRZ and RGZ as of right.

These changes have the potential to significantly affect the amenity, liveability, character, form and function of residential areas. An explanation of the effect of these changes is detailed in the examples below. It is submitted that commercial uses are best located in commercial zones to ensure the effective management and control of potential land use conflicts.

Case study 1 – Medical centres in residential zones

The proposed new residential zones seek to allow medical centres of up to 250m² as of right. If the floor area limit is met, a planning permit is not required for buildings and works associated with the medical centre use, and the building height requirements set out in the zone do not apply to the use. The proposed controls do not require medical centres to be located on main road, and there is no capacity to limit hours of operation or require landscaping or treatments along common boundaries between a medical centre and a residential or other sensitive use.

As a result of the absence of controls for medical centres, there would be nothing to prevent a large monolithic building being constructed on a quiet suburban street (with significant neighbourhood character qualities) well removed from a main road. Such a building could exceed the maximum residential building height specified in the relevant zone and/or associated schedule, without Council or community input. There would also be no capacity to assess or prevent amenity impacts on adjoining or nearby residents, by way of noise, light, smell or in any other way. Car parking areas and accessways associated with a medical centre could be located hard up against a common boundary with an existing residential dwelling as of right, with no capacity for a Council or the adjoining (affected) resident to comment on the layout of the car parking and access areas, or require boundary treatments.

The provision of as of right medical centres in residential areas without any control over location (e.g. on a road), amenity, height or hours of operation is likely to have significant impacts on the amenity and liveability of residential uses in residential zones and is inconsistent with the purpose of these zones.

Case Study 2 – Shops, Offices and Food and Drink Premises in residential areas

Within the new General Residential and Residential Growth zones it is proposed to allow Shops, Offices and Food and Drink Premises which meet floor area requirements as of right within 100 metres of a commercial zone or Mixed Use Zone. These provisions have the capacity significantly affect the character and amenity of residential areas. Many residential areas include local shops which are currently zoned either business or Mixed Use. These local shops are often surrounded by residential uses and areas. The proposed changes would allow for a creep of 100 metres from the edge of the local shops increasing the extent of retail uses by up to 100 metres in every direction from the edge of an existing centre, to the detriment of the residential amenity and liveability of an area.

In some instances the net effect of the '100 metre rule' would result in the creation of new extended retail strips in potentially inappropriate locations (such as along the foreshore), with no control over hours, built form or amenity outcomes. Such an outcome blurs the hierarchy of the zones and land uses. We also note that there is no clarity as to how the 100 metres is measured, which needs to be addressed.

Industrial zones

In industrial zones the proposed reforms as they relate to the City of Frankston seek to remove floor area limits for office.

These proposed changes have the potential to alter the land use hierarchy and mix in industrial areas limiting the availability of industrial land for industrial purposes.

It is submitted that with the freeing up of office uses in commercial zones the proposed removal of office floor area limits in industrial areas is unnecessary.

Significant opportunities already exist for retailing in industrial zones as a result of recent amendments to Restricted Retail controls. The introduction of additional retailing opportunities in industrial areas may encourage industrial areas to become unplanned de facto retail areas with limited ability to cater for traffic, pedestrian and car parking requirements associated with such uses.

Irrespective of the final form of the proposed reforms in relation to supermarkets and offices, it is submitted that a concept of 'reverse buffers' should be applied to all new non-industrial uses in the industrial zones. The imposition of such a requirement would go some way to ensuring industrial areas remain viable for industrial and potentially offensive activities, and maintaining an employment and economic base for the future.

Commercial zones

The new commercial zones water down the distinction between the existing Business zones and allow for additional activities without conditions or restrictions, including Accommodation, Retail, Office and Food and Drink premise uses.

The current distinctions between each of the five Business zones are not proposed to carry through to the new Commercial zones and schedules are not proposed for either of the Commercial zones. The replacement of the five Business zones with the two Commercial zones, although reducing the number of controls within the Victorian Planning Provisions (VPP):

- Removes the ability to provide different performance criteria and outcomes in different Business areas, and indeed distinguish between areas appropriate for office, manufacturing, bulky goods retailing from core retailing, business and entertainment uses;
- Blurs the zone and land use hierarchy; and
- Limits the ability to direct land use outcomes both at the edge of and within the commercial areas consistent with a precinct structure plan or similar policy or plan.

It is submitted that the new Commercial zones should include schedules to provide an opportunity to direct outcomes within commercial areas, where appropriate. Under this proposal retail uses will expand beyond the boundaries of the Frankston Central Activity Area, weakening of existing retail and land use hierarchy and distinctions.

Eroding the industrial zones

Background

In January 2012 the State Government introduced Amendment VC88 to the VPP format planning schemes. The amendment altered the definition for Restricted Retail Premises in planning schemes to expand the types of goods that can be sold and removed the floor space restrictions for restricted retail in the industrial zones. The scope of goods that can be sold under the amended 'Restricted Retail' definition include:

- a) Automotive parts and accessories;
- b) Camping, outdoor and recreation goods;
- c) Electric light fittings;
- d) Animal supplies including equestrian and pet goods;
- e) Floor and window coverings;
- f) Furniture, bedding, furnishings, fabric and Manchester and home wares;
- g) Household appliances, household electrical goods and home entertainment goods;
- h) Party supplies;
- i) Swimming pools;
- j) Office equipment and supplies;
- k) Baby and children's goods, children's play equipment and accessories;
- l) Sporting, cycling, leisure, fitness goods and accessories; or
- m) Goods and accessories which:
 - Require a large area for handling, display and storage of goods; or
 - Require direct vehicle access to the building by customers for the purpose of loading or unloading goods into or from their vehicles after purchase or hire.

Restricted Retail does not include the sale of food, clothing and footwear unless ancillary to the primary use.

The full effect of these changes on availability of industrial land for industrial activities is yet to be felt. However, with the widening of the type of goods able to be sold, the removal of the minimum floor area requirements, and the difference in property values between retail and industrial land, it is anticipated that there will be increased demand and pressure to use industrially zoned land for restricted retail purposes.

Proposed zone reform changes

Under the proposed zone reforms as they apply to the City of Frankston it is intended to remove the maximum floor area limits for office in the industrial zones.

The proposed changes in combination with Amendment VC88 introduced in January this year, will severely impact the availability of industrial land for industrial use and/or activities.

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It is submitted that the office floor limits should not be removed from the industrial zones as proposed. In the event that strategic basis exists for the alteration of the office floor limits in industrial zones, floor limits ought to be increased rather than deleted outright.

Significant opportunities already exist for retailing in industrial zones, the introduction of additional retailing opportunities in industrial areas may encourage industrial areas to become unplanned de facto retail areas. Further disaggregation of industrial land for retail activities should be avoided where possible, especially having regard to the widening of retail opportunities in the new commercial zones. In this respect it is submitted that the industrial zones should not be amended to allow for small scale supermarkets and associated shops.

Irrespective of the final form of the proposed reforms in relation to supermarkets and offices, it is submitted that a concept of 'reverse buffers' should be applied to all new non-industrial uses in the industrial zones. The imposition of such a requirement would go some way to ensuring industrial areas remain viable for industrial and potentially offensive activities, and maintaining an employment and economic base for the future.

Allowing increase lot yield in low density and rural areas, which will result in the fragmentation of land impact on Agriculture

The proposed zone reform changes seek to allow for:

- A minimum lot size of 0.2 hectares in the Low Density Residential Zone ("LDRZ") where land is connected to reticulated sewerage. Under the current controls the minimum subdivision area is 0.4 hectares. It is noted however that in Frankston the LDRZ areas are covered by the DDO4 which has a minimum lot size of 1ha, as such the changes do not significantly affect Frankston; and
- Increased ability to subdivide land in the Rural Conservation Zone ("RCZ") and Green Wedge Zone ("GWZ"), through the removal of the requirement to enter into a section 173 agreement to prevent further subdivision.

These changes have the potential to result in the further fragmentation of rural land, allowing for additional residential lots in environmentally sensitive areas with little or no facilities and services. The increase in residential activity in such locations will lead to land use conflicts, poor housing outcomes for future occupants, as well as significant demands on Council's and ratepayers to fund new infrastructure for unplanned and potentially unsustainable development.

Implementation / transition from Business to Commercial zones

In addition to the absence of schedules to the Commercial zones, the major concern in relation to Commercial Zones relates to the proposed translation process.

It is understood based on the exhibited materials that at the relevant translation date, it is proposed that all land within the existing Business 1, 2 and 5 zones will become Commercial 1 Zone land, whilst land in the existing Business 3 and 4 zones will become Commercial 2 Zone land.

It is submitted that the direct translation of the land in Business zones in this manner fails to ensure that land is zoned to appropriately implement any identified strategic planning outcome for an area. Ideally the translation of zones should occur in conjunction with the work on the new metropolitan planning strategy and the Frankston Central Activity Area structure plan.

Land at the entry to Frankston along the Nepean Highway is currently situated in the Business 5 Zone ("**B5Z**"). This land is situated proximate to the foreshore and abuts a residential area to the north, east and west. The purpose of the B5Z is to encourage development of offices and multi-dwelling units with common access from the street. Within the B5Z, office is as of right (where not situated in same building as a dwelling) and a shop is a prohibited use.

By contrast the purpose of the new Commercial 1 Zone ("**C1Z**") is to create vibrant mixed use commercial centres for retail, office, business, entertainment and high density residential uses. Within the C1Z retail premises are as of right.

The translation of the B5Z to the C1Z in this location would be inappropriate from both an amenity and strategic planning perspective. In this location it would be more appropriate to maintain a buffer zone between the core central activity area of Frankston and the surrounding residential and foreshore areas and apply a zone such as a Residential Growth Zone.

It is submitted that in providing for the transition from the Business zones to new Commercial zones, Council's should be given a minimum of 3 months from the time the new Commercial Zone controls are settled to the final application of the new zones, to allow Council's to nominate other appropriate zones in place of the proposed new Commercial zones where strategic justification and intent is clear, and the application of another zone is warranted.

Or alternatively that the translation of the Business 5 Zone to Commercial 1 Zone be deferred to enable Council's to review the most appropriate zone to reflect the intent.

Section 2 – items to be clarified

The following matters require clarification prior to the introduction of the new zone reforms:

- The criteria for the translating existing residential zones (Residential 1, 2 and 3) to new residential zones (particularly the Neighbourhood Residential Zone);
- Whether existing overlay controls are to remain after the new residential zones are applied (e.g. Design and Development Overlay controls), and if not the method for translating the existing controls into the schedules to the new zones; and
- The manner and/or method of applying schedules to individual areas affected by the new residential zones (including necessary processes, timing, justification for lot sizes and building heights).

Section 3 - Suggested Amendments to the Proposed Zone Reform Package

Based on the matters outlined above, it is respectfully submitted that prior to the adoption and implementation of the proposed zoning reforms:

1. Residential

It is submitted that the **Neighbourhood Residential Zone** should be amended to:

- Include a permit requirement for buildings and works associated with non-residential uses. Decision guidelines should also be included for the assessment of buildings and works applications and require consideration of traffic, amenity impacts, hours of operation and consistency with the purpose of the zone;
- Include general amenity requirements for non-residential uses;
- Limit new medical centres to locations along Road Zone category 1 roads; and
- Apply building heights to non-residential buildings.

It is submitted that the **General Residential Zone** should be amended to:

- Make Food and Drink Premise, Shop and Office section 3 prohibited uses;
- Include a permit requirement for buildings and works associated with non-residential uses. Decision guidelines should also be included for the assessment of buildings and works applications and require consideration of traffic, amenity impacts, hours of operation and consistency with the purpose of the zone;
- Include a general amenity requirements for non-residential uses;
- Limit new medical centres to locations along Road Zone category 1 roads; and
- Apply building heights to non-residential buildings.

It is submitted that the **Residential Growth Zone** should be amended to:

- Make Food and Drink Premise, Shop and Office section 2 permit required uses;
- Include a permit requirement for buildings and works associated with non-residential uses. Decision guidelines should also be included for the assessment of buildings and works applications and require consideration of traffic, amenity impacts, hours of operation and consistency with the purpose of the zone;
- Include a general amenity requirements for non-residential uses; and
- Apply building heights to non-residential buildings.

2. Commercial

It is submitted that the proposed new Commercial zones should be amended to allow for provision of schedules / recognition of precinct structure planning. The schedules should provide an opportunity to stipulate which uses are appropriate, as well as, height, setback, ground floor interface and character outcomes.

In addition, as detailed above Council's should be given a minimum of 3 months from the time the new Commercial Zone controls are settled to the final application of the new zones, to allow Council's to nominate other appropriate zones in place of the proposed new Commercial zones where strategic justification and intent is clear, and the application of another zone is warranted.

3. Industrial

It is submitted that the proposed Industrial zones should be amended as follows:

- The office floor limits should not be removed, or alternatively in the event that strategic basis exists for the alteration of the office floor limits, floor limits ought to be increased rather than deleted outright;
- A concept of 'reverse buffers' should be applied to all new non-industrial uses in the industrial zones.

4. Rural Zones

It is submitted that within the rural zones:

- The requirement for a section 173 agreement preventing further subdivision of land should not be deleted;
- Accommodation should be limited to uses associated with tourist facilities and agricultural production; and
- Permissible uses should be limited to uses consistent with the purpose of the zone (e.g. industry should be prohibited).

5. GWZ

It is submitted that within the Green Wedge zones:

- The requirement for a section 173 agreement preventing further subdivision of land should not be deleted.
- Permissible uses should be limited in scope (e.g. Place of Assembly should exclude Nightclub); and
- Council's should be provided with the capacity to create personalised schedules to the zone to appropriately reflect the varied nature of existing GWZ areas.

6. Typographical errors

In the decision guidelines for "use for industry / warehouse" (clause 32.04-3) words 'for non-residential uses' (3rd last dot point) need to be removed.

In the LDRZ there is reference to an ability to specify the size of outbuildings in a schedule, however a schedule has not been included with the zone provisions.

Financial Implications

There are number of financial implications with the proposed zone reforms, however not all are fully known or quantitative at this stage. They include:-

- Officer time to review where the more immediate transition zones apply;
- Further strategic work required to justify the implementation of the zones;
- The potential need to engage consultants to assist with the above tasks within the set timeframes by the State Government;
- The effect on the strength and competitiveness of business areas;
- The weakening of industrial areas through the broadening of land uses, and the impact this may have on an area maintaining its characteristics of activities. This has the potential to push industry further out from traditional areas adding to cost;
- The effect on the amenity of residential areas and consequential property values.

Environmental Implications

It is considered that the blurring of land uses and zones, particularly within and surrounding industrial areas may impact the environment of the amenity of people and business.

The allowance for more non-rural activities within the Green Wedge Zone and other rural zones will impact the environment in many ways.

Social Implications

It is considered that the lack of preparation and thorough thought to the content of the zones and the timing and management of implementation will raise the risk for error. The potential consequences could be well managed with the involvement of the development industry, and particularly local council planners. Council's suggestion that time be provided to review and guide the implementation of the final form of the commercial zones would reduce this risk.

A great concern shared by many other councils is the spreading of commercial activity into residential areas. This will have the impact of eroding the character of residential areas that Frankston has strived to guide and protect over many years through the implementation of the Neighbourhood Character Policy, and recent studies, such as those within the Sweetwater, Karingal and Kananook Creek areas.

Community Engagement

The MAV, along with DPCD, have been instrumental in arranging meetings with Councils and particularly planning officers, to provide information and feedback on the Zones Reform. Additionally, many industry related groups have held sessions to bring together the industry for the sharing of views and concerns, along with discussion surrounding suggestions within submissions.

Feedback from the Frankston community has been limited. However it is considered that the Council has actively made the community aware of the Zones Reform via articles in the local paper, and through a public meeting on 4 September 2012. Council has also promoted to the community how to make a submission to the Minister.

Consultant

David Vorchheimer of HWL Ebsworth has been assisting Council in formulating its submission. The submission forms the body of this report.

Conclusion

Overall, the Zones Reform provide a review and update of the VPPs which is welcomed in regard to the proposed residential zones which reflect the three tiered approach which has been anticipated for a number of years.

However, it is considered that the reform appears rushed and not well thought through in terms of the detail of the content of the zones and its implications on the workload of Council planners. Further it appears to be at odds with the recommendations of the Ministerial Advisory Committee and the current Bill before Parliament that is promoting and modifying planning systems for quicker decisions.

It is considered that the government should review the timing of the implementation of the proposed zones reform to enable a more thorough analysis of the impact of the blurring of zones and land use activity, as well as the opportunity for Council's to have input to the application of the zones in their transition.

Recommendation (A/GMD)

1. That Council note the report.
2. That Council resolve to lodge a submission with the Ministerial for Planning on Zones Reform based on the following elements as outlined in the report:
 - a. Key Concerns:
 - I. Blurring of zone hierarchy / Removing the land use hierarchy;
 - II. Eroding the industrial zones;
 - III. Allowing increase lot yield in low density and rural areas, which will result in the fragmentation of land impact on Agriculture;

- IV. Implementation / transition from Business to Commercial zones.
 - b. Request for clarity;
 - c. Opportunities to Amendments to the Proposed Zone Reform Package;
 - d. Typographical errors.
3. That any further input by the community or Councillors will be forwarded to the Minister for his Attention.