

<b>REPORT TO</b>	Development Assessments Committee Meeting	<b>ITEM NO. 2.2.1</b>
<b>MEETING DATE</b>	Monday, 20 August, 2012	
<b>SUBJECT</b>	<b>Zone Reform Interim Position Statement (August 2012)</b>	
<b>PREPARED BY</b>	Allan Cowley, Manager – Strategic Planning	
<b>AUTHORISED BY</b>	Director – Sustainable Environment	
<b>ATTACHMENT(S)</b>	YES	

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*Addendum – Late Report  
Circulated Monday, 20 August, 2012*

[VIEW ATTACHMENT](#)

**EXECUTIVE SUMMARY**

Planning Minister Matthew Guy has announced major proposed reforms to Victoria's planning zones, with the deadline for submissions being the 21 September, 2012. Full details of the proposed changes and background reports are available via the Department of Planning and Community Development (DPCD) web page:

<http://www.dpcd.vic.gov.au/planning/theplanningsystem/improving-the-system/new-zones-for-victoria>.

While the objectives of the proposed reforms are worthwhile, and some aspects may be supported, the potential impact of many of the proposed changes is of major concern.

In response to requests for further information by community groups and individuals, a number of information sessions (with Council planning officers) have been arranged and there are also ongoing discussions with various groups including the Municipal Association of Victoria (MAV), DPCD, Interface Councils and South Eastern Metro Group of Councils, which may influence a recommended submission (proposed to be reported to Council on 17 September, 2012). However, at this stage it is considered appropriate for Council to endorse an interim position to provide an indication of Council's concerns and a clear basis for further consultation and advocacy. A copy of the proposed interim position statement is attached as Attachment 1. This report is also intended to act as an interim discussion paper and will be made publically available.

**BACKGROUND**

In mid July 2012, the Minister released details of a proposed Zone Reform package, which includes significant changes to the residential, commercial, industrial and rural zones which form part of the Victoria Planning Provisions i.e. the standard set of provisions which are used in all planning schemes across the state.

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.

**BACKGROUND (CONT'D)**

Subsequent advice and presentations by DPCD have also highlighted a number of further sources for the proposed reforms including:

- 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).

These reports provide important strategic background as the explanatory material released with the Zone Reforms is relatively limited. In general, the reports of the Productivity Commission (PC) and VCEC support greater consideration of the economic impact of regulation (including planning regulation) and support moves that facilitate greater competition.

In this context the majority of the Minister's proposed reforms propose to reduce the level of regulation over land use and development, particularly in relation to supermarkets and retail land use. While this may provide 'flexibility' it is less clear that it achieves the intended aims of simplifying requirements and providing greater certainty. It is also notable that the PC report advocates a more rigorous cost/benefit assessment of proposed regulatory changes; however, there is very little detailed assessment of the proposed changes in general or in regard to specific locations and circumstances.

The extent of the proposed zone changes is considerable and at this stage the full implications are still being considered. Accordingly, this report provides an overview of the main points to date, as the changes relate to the Mornington Peninsula rather than a final assessment.

**RESIDENTIAL ZONES – OVERVIEW**

The Minister proposes to replace the existing three residential zones (Residential 1, 2 and 3) which apply under the Mornington Peninsula Planning Scheme with three new zones which are intended to provide greater clarity about the type of use and development, and the level of change, that can be expected in any residential area. The three new zones are:

The Neighbourhood Residential Zone (NRZ) with similar land use provisions to the current Residential 1 Zone. The NRZ will enable Council's to use multiple local Schedules for different areas to specify a maximum building height for a dwelling or residential building (with a default maximum of 9 metres), a minimum lot area and the maximum number of dwellings that may be developed on a lot (with a minimum of two). The NRZ is intended to restrict housing growth in areas identified for 'urban preservation'.

The General Residential Zone (GRZ) provides for infill residential development based primarily on the existing Rescode provisions, but also enables specification of a maximum height for a dwelling or residential building.

**RESIDENTIAL ZONES – OVERVIEW (CONT'D)**

The Residential Growth Zone (RGZ) is intended to enable housing growth and diversity in appropriate locations and includes a discretionary height limit of 12.5 metres, facilitating three storey developments. A local height limit may also be specified.

Although the proposed zones include a section on purpose and provide for inclusion of objectives, none of the proposed zones (at this stage) include a clear indication of their intended role in accommodating housing demand/growth.

In addition, both the GRZ and RGZ provide for much more mixed use development.

Shop and office are currently prohibited uses in the Residential 1 Zone and Food and Drink premises require planning approval (with applications for takeaway food premises restricted to main roads). The zone reforms indicate that no permit would be required for:

- Medical centres (provided the gross floor area of all buildings must not exceed 250 square metres (a permit may be granted for a medical centre with a greater floor area);
- Shop (other than adult sex bookshop and bottle shop);
- Food and drink premises (other than convenience restaurant, Hotel and Tavern); or
- Office (other than medical centre).

Provided:

- They must be located within 100 metres of a commercial zone or Mixed Use Zone;
- The land must have the same street frontage as the land in the commercial zone or Mixed Use Zone; and
- The leasable floor area must not exceed 100 square metres (250 square metres for offices).

A permit may also be granted in both the GRZ and RGZ for a shop, food and drink premises or office with a greater leasable floor area, provided it is within 100 metres of a commercial zone and on the same street frontage.

In addition to the three new residential zones, the Low Density Residential Zone is retained; however the minimum lot size is reduced from 4,000 square metres to 2,000 square metres where reticulated sewerage is available.

It has been indicated that the new residential zones will be applied in consultation with local government over a period of 12 months from when the new zone provisions are finalised.

**RESIDENTIAL ZONES – COMMENTS**

The notion of designing different zones to clearly indicate different expected/supported levels of change is supported in principle, provided existing overlays remain in place. It is noted that questions of implementation are to be addressed after the zone provisions are finalised. However, the way in which the zones are to be applied is critical to assessing their potential impact. Any support by Council for the new zone provisions is predicated on existing overlays remaining in place.

**RESIDENTIAL ZONES – COMMENTS (CONT'D)**

The proposed ability to apply multiple Local Schedules in the residential zones to vary development requirements in different areas is also supported (currently there is only provision for one local schedule across the entire zone which has limited its use). However, it may be argued that this approach duplicates the function of the Design and Development Overlay, and potentially adds to the complexity of the Victorian Planning Practice Notes (VPP's) rather than increasing clarity.

The proposals which will enable mandatory height limits to be established and (in the NRZ) mandatory minimum lot sizes and maximum development densities are also supported, and are consistent with Council's own approach through Overlay provisions. Notably, the proposed height limits only apply to dwellings and residential buildings, which is significant given the increase in non residential uses which are proposed to be included in the new residential zones, as outlined above. In addition, the dwelling density provisions require that the minimum number of dwellings that may be permitted in the NRZ is at least two, and it is not clear whether such dual occupancy development will be open to future subdivision, despite any minimum lot size that may be specified. Unless there is provision to prevent serial dual occupancy development the proposed subdivision controls will be ineffective. It would be far clearer to be able to specify only one dwelling per lot in certain areas (with some exemption for dependent persons units) with no implied subdivision potential.

However, the proposed new zones go far beyond changes to the residential provisions by including an increased number of as of right commercial uses; including medical centres, shops, offices and restaurants.

As outlined above, it is proposed that these uses could be established without a permit within 100 metres of land in a commercial zone with the same road frontage (except in the Neighbourhood Residential Zone) and subject to floor area limits, which even then may be varied with a planning permit. Buildings for these uses would also be exempt from the need to obtain a planning permit and would not be bound by residential height limits. These use provisions are considered likely to create substantial new uncertainty in regard to the future pattern of land use and development around town centres and neighbourhood shopping areas.

The provisions for commercial 'creep' into residential areas near existing shopping centres is a major concern for several reasons:

- They will potentially disrupt the implementation of policies and plans which are based on the principle of maintaining a hierarchy of commercial centres i.e. a range of centres which are clearly different in size, function and character, where larger centres serve larger catchments; and
- Many smaller centres have multiple road frontages with the potential for a major increase in their 'defacto' commercial area. This would potentially result in smaller centres changing their role in the hierarchy (and their look, feel and function) potentially undermining larger centres and reducing the level of service they provide. There has been no assessment released by DPCD of the potential increase in defacto commercial area that may result from the proposed changes.

**RESIDENTIAL ZONES – COMMENTS (CONT'D)**

It is important to recognise that a hierarchy of centres is not maintained simply for its own sake. A hierarchy – i.e a range of centres usually involving many small centres and fewer larger centres providing higher order services, was originally a description of a common pattern of development. Maintaining a hierarchy has become a policy objective (e.g. in the activity centre strategy in Melbourne 2030 and the activity centres strategy for the Mornington Peninsula) having regard to a number of intended outcomes:

- It provides for commercial/retail development of a scale and function consistent with the intended role and scale of each particular township or locality, even where there are locational opportunities for additional growth. In other words, where towns are intended to remain relatively small, a hierarchy policy allocates provision for growth in commercial floor space in proportion to the scale of the resident population base/catchment, even though the location of a small town on a major road or near a freeway exit might ‘naturally’ attract commercial strip development along that road to capture passing trade. In this way commercial development is kept in proportion to the overall scale of the township. If total trade within any catchment consists of both the resident catchment and passing trade, hierarchy policies tend to limit the adhoc growth in areas of high exposure in favour of supporting locations which are central to larger catchments;
- Hierarchy policies provide certainty for private investment. For example, the Barker review of the United Kingdom Planning System in 2006 noted that plans and planning decisions can deliver positive economic outcomes through providing greater certainty for investors about the likely shape of future development. It may be argued that one of the reasons for the limited success of Melbourne 2030 in terms of the consolidation of activity centres has been the lack of certainty (due to the sheer number of designated centres) and the associated inability to focus major public and private investment;
- Hierarchy policies provide certainty for public investment in infrastructure such as road systems, parking areas, public transport services, service infrastructure, recreational space etc. The provision of these public goods is rarely fully factored into private development decisions and the establishment of a clear hierarchy (and with it the prioritisation of public expenditure) avoids the need for duplication or the potential under utilisation of public investment;
- Hierarchy policies facilitate the achievement of critical mass of activity in major centres. While private investment decisions may have regard to land costs and market exposure, less weight is (usually) given to building the overall character and attractiveness of centres as a whole, what may be referred to as the ‘good design bonus’, even though these factors provide a benefit to traders as well as the public. The consolidation of relatively compact commercial centres provides for a density of activity, walkability and interaction in core areas also known as ‘street life’, which in itself becomes an attraction, provided issues of congestion and access are appropriately managed. The proposed provisions are more to result in fragmented strip development along main roads on the edge of centres, undermining character and design objectives; and
- A further advantage of compact centres is that it provides the opportunity for increased access by public transport services (by rationalising destinations). The alternative model of dispersed retailing along major transport routes may reduce the costs of development and increase price competition on goods but it will not necessarily reduce the (car dependent) cost of living.

**RESIDENTIAL ZONES – COMMENTS (CONT'D)**

Against these considerations the PC report appears to argue that hierarchy policies mainly support the interests of established traders and land owners (via rent levels) against the establishment of (out of centre) competitors, and to the extent that increased competition ‘kills off’ particular traders or even existing town centres, this is just part of the process driven by changing consumer preferences.

The PC view is supported by bodies such as the Urban Taskforce, a non-profit organisation representing Australia's most prominent property developers and equity financiers. The committee includes some of Australia's leading property developers. However, this tends to illustrate that no position is completely interest free, there are simply different balances between different interests.

Fundamentally the PC report, and in turn the current zone reform proposals raise the question of how best to make long term decisions regarding urban form and the distribution of land use and development.

The PC view is that the patterns that emerge through market competition are best (most economically rational), while the alternative would seek a more cooperative model with shared interests/net community benefit in mind, expressed through long term strategies and public policy. To the extent that planning can be accused of underestimating the economic costs of regulation, the community and environmental costs of market based decisions also need to be carefully considered.

The PC report does in part acknowledge the role of public planning stating:

“ *It is recognised that at times restrictions on competition may be required to achieve the objectives of the planning system, such as public amenity or equitable access to facilities and services. This is because commercial businesses are usually focused on the private costs and benefits of a development or planning proposal and may not necessarily consider the public environmental, social or economic costs and benefits associated with their decisions*”.

The PC report goes on to recommend that governments should not consider the viability of existing businesses at any stage of planning, rezoning or development assessment processes; and that the impacts of possible future retail locations on existing activity centre viability (but not specific businesses) should only be considered during strategic plan preparation or major review.

However, one of the key issues with the current zone reforms in respect to commercial use and development is that it is being proposed in advance of the new Metropolitan Strategy or any opportunity for review of current strategies, and without an assessment of the costs and benefits of replacing the current policies with an alternative.

These concerns are particularly relevant to the Mornington Peninsula where there are many towns and villages with small commercial areas (such as Red Hill, Shoreham, Tyabb, McCrae etc) that have limited trade catchments and high seasonal variability.

These small centres are particularly vulnerable to out of centre competition. While the economic argument may be that ‘all competition is good’, there is a risk that the lack of certainty created by the proposed changes will in fact inhibit investment and result in loss of service and reduced competition, particularly in small centres, while increasing overall car dependency. There is also likely to be argument for further expansion if businesses established in these outer areas become more successful – creating a zone of uncertainty.

**RESIDENTIAL ZONES – COMMENTS (CONT'D)**

In addition to the impact on the commercial function of activity centres, the proposed changes may also result in loss of land in prime locations adjacent to commercial centres for medium density residential development. Sites may be held by low yield commercial uses, or in anticipation of some future commercial use, inhibiting re-development and site amalgamation – since such (as of right) commercial uses may be perceived as an easier option, particularly with the reintroduction of notice and appeal provisions for all residential applications in the Residential 3 Zone. It would only require a few sites of this kind to be ‘locked up’ to ‘sterilise’ large areas in terms of frustrating potential site consolidation and re-development.

The purpose of designating a Residential Growth Zone also seems to be undermined by reintroducing provisions for notice and appeal. Although Council fully supports community involvement in planning decisions, it is arguable that provided there is full consultation in the establishment of areas for higher housing densities, with a clear opportunity for all parties to debate issues of design, infrastructure/open space and preferred future character etc, that once this process is completed it is reasonable for all parties to rely on the established plan and notice should only be required for significant variations.

Other ‘small’ changes to the residential zone provisions, may also have a significant impact. For example, it is proposed to change the provisions affecting Places of Worship (which are already allowed without a permit in the Residential Zone) by:

- Removing the restrictions on social or recreational activities;
- Increasing the allowed floor area from 180 square metres to 250 square metres; and
- Removing the requirement that such as of right uses must be located on main roads.

These changes may result in 24 hour ‘venues’ in any residential street. Combined with as of right medical centres, and the defacto expansion of commercial zones around activity centres, there are potentially serious impacts on residential amenity, all under the heading of ‘as of right use’.

**RESIDENTIAL ZONES – RECOMMENDATIONS**

1. Overall it is considered that commercial expansion adjacent to existing centres is better addressed through the Planning Scheme Amendment process, given that amendments may be ‘fast tracked’ but still place some onus on applicants to provide strategic justification for expansion.
2. This approach was applied relatively recently in relation to Aldi and to new hardware chain store expansions and any delays in these cases were arguably warranted to ensure locations were identified which achieved a reasonable ‘fit’ with existing development patterns.

**RESIDENTIAL ZONES – RECOMMENDATIONS (CONT'D)**

3. It is critical to recognise that changes to introduce as of right commercial use and development would exclude the ability of Council's or the Victorian Civil and Administrative Tribunal (VCAT) to apply:
  - Any form of State or Local Policy,
  - Standard provisions (regarding amenity protection, hours of operation, car park location, site landscaping etc. such as currently apply to home occupations and home industry);
  - Standard conditions; or
  - Contribution requirements – such as parking or infrastructure levies.

Paradoxically, existing home based businesses will be subject to a higher level of control than the new commercial uses. It is far preferable for commercial uses, including medical centres, to be subject to a permit process providing greater certainty to all parties.

4. The provision of such exclusions for 'small scale' proposals tends to result in the unintended consequence of inhibiting larger scale proposals in order to avoid activating a permit trigger. It is considered far preferable, to make all proposals for commercial use in residential areas subject to planning approval. As a minimum it is necessary to ensure that any development associated with a commercial use in a residential area is subject to planning approval and that the residential height limits equally apply.
5. In addition, as noted the purpose statements do not provide sufficient direction or indication of how these new zones are intended to be applied, and the residential role (and the protection of residential amenity) should be clearly emphasised.
6. Finally, it is arguable that these provisions may be better suited to land near major commercial centres, but are a serious threat to small local centres – this could be controlled by an ability to specify (in a Local Schedule to the zone) where these provisions will and won't apply. i.e. only in the vicinity of larger centres/localities specified within a Schedule. If the intended purpose is to facilitate a small scale commercial component within new residential developments (such as a shop with a retirement apartment complex) this could also be addressed through a Local Schedule.
7. In regard to the Low Density Residential Zone (LDRZ), in the Mornington Peninsula Planning Scheme the main subdivision requirements are determined by existing Overlay provisions. Again it is critical that these Overlays remain in place as they are based on considerations other than the availability of sewerage including protection of environmental features (stream lines, native vegetation etc) and landscape values.
8. In addition, where the LDRZ exists outside the Urban Growth Boundary (UGB) it appears that the proposed change would increase potential subdivision – and therefore approval of both Houses of Parliament would be required.
9. In many instances LDRZ areas have been subdivided to a particular final design and the proposals will raise all the problems associated with adhoc infill (usually dependent on battleaxe lots and potential loss of privacy to back yard areas). In the main it is preferable for significant changes in subdivision controls affecting well established areas to be considered through the Planning Scheme review and amendment process in relation to specific areas, rather than through 'one size fits all' provisions.



## **COMMERCIAL ZONES – OVERVIEW**

The five existing Business Zones are proposed to be reduced to two Commercial Zones:

The new Commercial 1 Zone (C1Z) is intended to promote ‘vibrant mixed use commercial centres for retail, office, business, entertainment and high density residential areas’ whereas the aim of the Commercial 2 Zone (C2Z) is ‘to develop commercial areas for offices and appropriate manufacturing and industrial uses that do not affect the safety and amenity of adjacent sensitive uses.’

However, shop, supermarket and office are proposed to be as of right in both zones (with a permit required for supermarkets with a floor area greater than 2,000 square metres and shops of more than 500 square metres in the C2Z).

A dwelling with a frontage at ground floor level of more than 2 metres will still require a permit in the C1Z (and is a prohibited use in the C2Z) however all other accommodation uses will be allowed without a permit.

## **COMMERCIAL ZONES – COMMENTS**

Because both zones allow for retail use there is arguably no great functional difference between them and neither provides the ability to clearly designate a non retail commercial area. This is in effect the creation of an ‘open zone’, as recommended by the Productivity Commission, on the basis of increasing the scope for competition.

The recommendations for ‘open zoning’ could have a significant impact on the retail hierarchy strategies applied by many municipalities, including the Mornington Peninsula Shire Council as outlined in the previous section. With all shop use being as of right (and with removal of the ability to trigger a permit requirement for even very large floor area proposals) there will be limited ability to influence the location of major retail anchor stores and supermarkets, which may seek to locate in high exposure out of centre locations.

For example the Business 5 Zone (B5Z), which is often located on the edge of commercial centres and used to accommodate demand for offices and medium density housing, is proposed to be included in the new Commercial 1 Zone. A shop, which is currently a prohibited use, would be allowed without a permit. Accordingly, substantial areas on the edge of existing centres will be converted to potential retail areas, compounding the effect of the changes to the residential zones discussed above.

Equally, the Business 4 Zone (B4Z), is often located in out of centre locations on main road/highways (such as along Nepean Highway, Mornington) and is used to accommodate bulky goods retailing and manufacturing sales. Shop is currently a prohibited use however the B4Z is proposed to be included in Commercial 2 Zone where a supermarket will be allowed without a permit (up to 2,000 square metres leasable floor area) along with additional shops (up to 500 square metres in total floor area); and with greater floor areas subject to permit.

In many cases the areas included in the existing Business 3, 4 and 5 Zones were not intended to accommodate retail uses, and would not have been included in a Business Zone if retailing was permissible, having regard to maintaining the hierarchy of commercial centres, the potential impact on the ‘traditional’ town centres and the objectives of town centre consolidation.

In addition, while the provisions for accommodation in the Commercial 1 Zone is generally supported, there is a risk that buildings may be converted to residential premises in commercial main streets creating residential ‘breaks’ in a retail commercial street frontage.

### **COMMERCIAL ZONES – COMMENTS (CONT'D)**

While there may be arguments for greater flexibility in some locations, the changes to the business/commercial zones currently proposed will undermine the ability to maintain a hierarchy of commercial centres and facilitate proposals for major out of centre retail development, particularly strip development along main roads.

### **COMMERCIAL ZONES – RECOMMENDATIONS**

1. It is considered that it would be preferable to add to the range of existing Business Zones and allow considered zoning decisions rather than simply eliminating a number of zones which have been applied to achieve a specific land use outcome in many municipal areas.
2. An alternative would be to provide a Local Schedule to the zone to enable the provisions to be tailored to local conditions, e.g. to identify those locations that are within the current B4Z and B5Z where retail use may be permitted and to vary the allowed floor space.
3. The control of accommodation uses where it is proposed to create a frontage of more than 2 metres at ground floor level should be retained.

### **INDUSTRIAL ZONES – OVERVIEW**

The existing industrial zones are proposed to be retained but with several significant changes which continue the theme of 'opening up' the zones.

In the Industrial 3 Zone which is used throughout the Shire to accommodate service industry (often in edge of township and main road locations) and where shop is currently a prohibited use, the proposed provisions will allow (without a permit):

- Supermarket (up to 2,000 square metres leasable floor area); and
- Shop (other than adult sex bookshop, restricted retail premises and supermarket), provided the shop
  - Must adjoin, or be on the same land as a supermarket; and
  - The combined leasable floor area for all shops adjoining or on the same land as the supermarket must not exceed 500 square metres.

The leasable floor areas cannot be increased with a permit.

In addition the current fixed limitations on the floor area of offices in Industrial Zones (maximum of 500 square metres) will be removed, although it will be possible to require a permit for an office above a certain floor area.

## **INDUSTRIAL ZONES – COMMENTS**

These proposed provisions are apparently intended to further increase commercial competition and to recognise existing changes in the use of industrially zoned land, however, as with the changes to the residential and commercial zones they raise major concerns as to whether the provision for supermarkets and shops to establish without a permit in out of centre main road locations will result in strip development, undermine the hierarchy of centres and potentially reduce the level of service in existing centres.

It is noted that there is no definition of supermarket and it is uncertain what happens if a supermarket use (which ‘anchors’ associated shop use in the Industrial zone) ceases to operate i.e. do the associated shops become ‘non conforming?’

The effect of the changes to the industrial zones is, if anything, potentially greater, due to the larger areas that are likely to be affected and the lower land costs that may attract more speculative proposals.

The proposed removal of the 500 square metre limit on office use in industrial zones (given it will be possible to apply a limit through a Local Schedule), tends to reflect the reality of existing use in many industrial areas and is not opposed per se.

However, it should be recognised that the demand (or expectation of demand) for commercial use in Industrial areas will result in additional constraints on the availability and use of industrial land, making it more difficult to attract and retain some forms of service industry and local economic development.

## **INDUSTRIAL ZONES – RECOMMENDATIONS**

1. It would be preferable to retain the existing industrial zone provisions, other than in relation to office floor space limits, and to address any perceived shortage of land for retail and supermarket expansion through a strategic planning process – as part of the Metropolitan Strategy and triennial Planning Scheme Review cycle.
2. Where there is an argument that there would be a significant net community benefit from retail/supermarket development in out of centre industrial areas, in the short term, this out of centre development would be better addressed through the Planning Scheme Amendment process, given that Amendments may be ‘fast tracked’ but still place some onus on applicants to provide strategic justification for expansion.

## **FARMING ZONE AND GREEN WEDGE ZONE – OVERVIEW**

The stated aim of changes to the Farming Zone (FZ) and Green Wedge Zone (GWZ) is to support agriculture and provide additional flexibility for farmers. Further aims are to allow more tourism related uses and support population retention to sustain rural communities.

Changes to both the GWZ and FZ include:

- Primary produce sales i.e. farm gate sales, will be allowed without a permit provided it must not be within 100 metres of a dwelling in separate ownership and the area used for the display and sale of primary produce must not exceed 50 square metres.

**FARMING ZONE AND GREEN WEDGE ZONE – OVERVIEW (CONT'D)**

- Rural industry (other than Abattoir and Sawmill) will be allowed without a permit provided it:
  - Must not have a gross floor area more than 200 square metres;
  - Must not be within 100 metres of a dwelling in separate ownership;
  - Must not be a purpose shown with a Note 1 or Note 2 in the table to Clause 52.10; and
  - The land must be at least the following distances from land (not a road) which is in a Residential Zone and Rural Living Zone:
    - The threshold distance, for a purpose listed in the table to Clause 52.10; and
    - 30 metres, for a purpose not listed in the table to Clause 52.10.

These conditions may be varied with a permit.

However the more significant changes involve the removal of limits on a range of currently prohibited urban uses, including Primary School, Secondary School, Place of Assembly, Medical Centre and Service Station – and (in the Farming Zone) Residential villages. These changes appear to be linked to the aim of supporting population growth in regional areas

In addition a further group of major changes aim to provide discretion to consider more tourism development in rural zones.

Restaurant, Function Centre, Group Accommodation, and Residential Building (land used to accommodate persons) may all be approved (as is currently the case) but will not be limited by current requirements regarding

- Minimum site size;
- Maximum patrons or number of room limits;
- The requirement to only accommodate persons away from their usual place of residence; or
- The need to operate in conjunction with Agriculture, Outdoor Recreation Facility, Rural Industry or Winery (the current provision referred to as the 'in conjunction with' test).

There are no changes to the subdivision provisions of the GWZ (40 hectare minimum lot size) nor the need to obtain a planning permit for a dwelling. However, in the FZ, a provision which requires a Section 173 Agreement when a house is excised from a property to prevent any further subdivision of the land is proposed to be removed – enabling applications for further house excisions at a later date.

**GREEN WEDGE ZONE AND FARMING ZONE – COMMENTS**

These changes to the GWZ and FZ represent very significant changes which may have a particular impact on the Mornington Peninsula, where there are significant development pressures.

**GREEN WEDGE ZONE AND FARMING ZONE – COMMENTS (CONT'D)**

The proposals to clarify the opportunities for agricultural land use are supported, but in fact appear to be minimal. Equally, it is not clear that proposals to allow the sale of ‘value added’ goods produced from produce grown on site e.g. jam produced from strawberries grown on site, olive oil produced from olives grown on site, which has previously been proposed by the Interface Councils, has actually been addressed, and this is a change that should be considered.

While the proposed provisions regarding rural industry obviously have a connection with supporting agricultural use, it is not clear that allowing any such uses ‘as of right’ will create certainty for either proponents or adjoining land owners, or provide for proper assessment of potential impacts (from noise, waste water disposal, waste product disposal etc which are not necessarily related to floor area. A permit requirement is considered preferable, or at least the application of conditions similar to those which apply to home occupations/home industry.

The increase in the range of essentially urban uses which are proposed to become discretionary in the GWZ, including service stations, medical centres and schools appears to be contrary to the core purposes of the Zone and can be readily expected to result in speculative proposals, particularly along main roads, and the associated need for time and resources to contest additional appeals. These uses are better directed to existing township areas. Where there is a sufficient strategic justification and demonstrable net community benefit the use of the Planning Scheme Amendment process may be warranted in a limited number of cases.

The reforms in relation to tourism development in part appear to be based on the VCEC interim report ‘Unlocking Tourism’ and advocate a similar ‘Competition Policy’ to that of the Productivity Commission, outlined in previous sections of this report.

In the case of tourism development, the policies on the Peninsula have essentially emphasised the value of the Peninsula for unstructured outdoor recreation and have involved a preference for locating commercial tourism development within established township areas, or on larger sites where the buildings and work associated with tourism will still be a relatively minor component of the site, even though they may provide the most significant economic return.

This approach is based on the notion of retaining as much as possible a rural/agricultural landscape. This approach is also seen as one way of supporting land management – with the owner/managers of larger sites having greater commercial opportunities. In this context, given that larger sites arguably contribute to the rural landscape to a greater degree than smaller sites, there is less sense that tourism development is ‘borrowing’ or appropriating the rural character that is supported by other property owners.

In addition, while the current expression of the ‘in conjunction with’ test can be improved, possibly by use of compatibility and site coverage criteria, and reference to natural systems conservation as one of the core activities, the test has the critical function of ensuring that rural land is not simply regarded as a cheap location for stand-alone commercial development.

While the VCEC argues for greater competition, it is important to recognise that the Peninsula GWZ is a shared resource and current policies have achieved a careful (and productive) balance between diverse interests. In this context, a clear statutory framework is necessary to ensure that cumulative overdevelopment (the tragedy of the commons scenario) does not result in the loss of the core values of the GWZ.

At this stage, it is considered that the combined effect of all of the proposed changes is likely to be to undermine the purpose and credibility of both the UGB and the Green Wedge Policy and to increase the expectation of non agricultural development, to the detriment of farming and farmers, and all those activities that benefit from the rural landscape.

### **GREEN WEDGE AND FARMING ZONE – RECOMMENDATIONS**

1. To the extent that the rural zones need to provide greater flexibility this is better addressed through the ability to specify appropriate standards for different areas in Local Schedules to the zone, while the current default standards, including provisions to prevent serial excisions, should remain in place.
2. There may be qualified support for Place of Assembly to be a permissible use as this will enable festivals and events to occur in Green Wedge that otherwise are technically prohibited when considered under the planning scheme. However the preference is for events to be in conjunction with agriculture/natural systems and there should be a control over the number of events and the scale, comparable to the current carnivals and circuses best practice guidelines.
3. In regard to tourism developments one option in relation to GWZ may be a sliding scale with an initial threshold, while maintaining some form of in conjunction with test i.e. a requirement for substantial agricultural or biodiversity conservation activity to take place on the same site. This approach should be the subject of further investigation following the release of the Green Wedge Audit report.
4. The interim VCEC report also outlines several alternatives, and while the final recommendation (still to be released) may be for an ‘open rural zone’ comparable to the PC’s open commercial zones, other alternatives, should be considered.
5. In any event, the GWZ on the Peninsula should not be varied until the Peninsula Planning Statement is completed as the new zone proposals appear to go directly against the intent of the Statement.

### **CONCLUSION**

Fundamentally, the new zones appear to reduce the toolkit available to implement a range of key planning strategies, from containment of retail centres to maintaining land for industrial use and protecting productive agricultural land. High discretion zones with limited ability to provide policy direction are likely to increase uncertainty and inconsistency, and result in poor outcomes.

While the drivers of the proposed reforms, including the value of increased economic competition, are significant and warrant consideration, the introduction of such major reforms deserves more critical consideration and consultation.

For example, although the intended aim of the reforms is to increase certainty and credibility to the planning system, the current proposals, and particularly the increase in the number of discretionary and as of right uses is likely to have the opposite effect. There will be greater uncertainty in terms of the when, where and whether the proposed as of right uses will ‘emerge’.

Equally, the proposed reforms aim to facilitate greater economic activity and apparently consider the removal of planning constraints will support this goal. However, without a strong policy framework and the associated statutory tools there are significant risks of dispersed uncoordinated development based on seeking short term competitive advantage but with long term public costs. The introduction of such major changes prior to the completion of the metropolitan strategy is potentially counter productive.

**CONCLUSION (CONT'D)**

It may be noted that the Making Local Policy Stronger report in effect recommended greater use of specific zones, Overlays and Schedules rather than Local policies. The current proposals in fact appear to go against this direction but do not provide for an alternative – they would result in wide discretion with a very limited policy framework, resulting in more lengthy and costly appeals over speculative proposals. If the use of Local Policy is intended to facilitate the consistent exercise of discretion, then Councils will require the time and resources to address the range of issues which the proposed zone reforms will create.

In this context the Minister should be strongly urged to consult further with Local Government and to provide for independent and transparent assessment of the reform proposals, potentially providing for hearings by the Ministerial Advisory Committee, prior to proceeding.

Specifically in regard to the GWZ proposals, the reforms are being proposed prior to consultation on the Metropolitan Strategy and Peninsula Planning Statement, the release/discussion of the Green Wedge Audit, or the release of the final VCEC report.

For some areas the changes to the GWZ and other rural zones may provide a necessary boost to economic activity and support for declining populations; however these are not the circumstances facing the Peninsula where over a long period, and with bi-partisan support, a critical and highly valued balance between interests has already been established, producing more than \$850 million in tourism and \$600 million in agricultural production, annually. It is crucial not to put this balance at risk.

The current GWZ provisions support this balance, consistent with the role of the Peninsula in metropolitan strategy and as a urban Biosphere reserve, and while some adjustments may be considered, the proposed zone reforms could undermine this shared resource which contributes so much to Melbourne's liveability.

At this time there are ongoing discussions with DPCD, the community and a range of other groups on the implications and alternatives to the current zone proposals which will be completed to enable a submission by the deadline of 21 September, 2012. It is therefore recommended that Council adopt an interim position, based on the factors outlined in this report as a basis for the current consultative and advocacy processes.

**RECOMMENDATION**

**That Council endorse the interim position outlined in Attachment 1 to this report, with a view to further consideration of a formal submission in response to the zone reform proposals prior to 21 September, 2012.**