

## 1. INTRODUCTION

This submission has been prepared by the Planning Institute of Australia Victoria Division ('PIA Vic'). PIA Vic welcomes the opportunity to make this submission to the Government's *Reformed Zones for Victoria* package, and supports the need to reform the *Planning and Environment Act 1987* and the *Victoria Planning Provisions*.

The Planning Institute, originally created on 11 August 1951 as the Regional and Town Planning Institute, subsequently become the Royal Australian Planning Institute, commenced as the Planning Institute of Australia (PIA) on 1 July 2002. The PIA official commemoration was conducted on World Town Planning Day, 8 November 2002.

PIA is a not-for-profit federation of State and Territory Divisions with the Board of Directors comprising one representative from each state Division, an elected President, and a Secretary. PIA is represented through these Divisions around Australia, Overseas and through Networks and office bearers.

PIA Vic undertook a survey of its members to assist it in preparing this submission. The survey received 46 responses, 23 of which were from government, 15 from consultants and 8 from academia. References to the survey results are included in the discussion below.

## 2. OVERVIEW

This submission outlines PIA Vic's response to the *Reformed Zones for Victoria* package comprising the Discussion Paper, Fact Sheets and Draft Zones.

Consistent with its platform, PIA Vic supports in principle the reform process being undertaken by the Government, key elements of which are:

- Underwood Report
- Regional Strategies
- Metropolitan Strategy
- Legislative reforms
- Zone reforms.

The proposed zone reforms, which are the subject of this submission, have been promoted variously as a mechanism for enhancing the responsiveness of the planning system, contemporising it, responding to community expectations, improving clarity, and ensuring the planning systems acts as an economic lever.

These are reasonable objectives. It is important that these objectives are well understood because the proposed reforms are not merely refinements to the current system; they have the potential to transform it.

The degree to which these objectives should transform the Victorian planning system needs to be considered in the context of the broader range of objectives embodied in the *Planning and Environment Act 1987*. For example, a relevant question is the degree to which the objectives of

improving clarity and promoting economic development support or contradict each other. Another relevant question is how do the reforms influence the social and environmental objectives of the planning system?

PIA Vic's concern is that there is insufficient background information to enable the proposed reforms to be assessed against the objectives they are intended to support. Furthermore, the background materials do not provide a strategic explanation as to how the reforms support the broader objectives of planning in Victoria or any analysis of consider their administrative implications.

This concern was reflected in the results of the PIA Vic Member Survey on the zone reforms. While the small sample size militates against drawing strong conclusions from this data, the survey responses received suggest a significant level of dissatisfaction by members with the levels of information and strategic justification provided as part of the review.

PIA's concerns with the process by which the reformed zones are being implemented may be summarised as follows:

- The background information provided with the package lacks sufficient detail to explain the origins and assess the implications of the proposed reforms.
- No strategic justification has been provided for the proposed reforms.
- The zone reforms pre-empt the introduction of the proposed Metropolitan Strategy and have potential to undermine key planning principles that have formed the basis of previous strategies. These principles are long-standing and have previously been bipartisan.
- There have not been clear links to previously completed work that was directly relevant and could have positively informed the zones, such as the Advisory Committee Report on New Residential Zones for Victoria. In some cases, such as the Retail Policy Review, such work appears to have been abandoned.
- The process of introducing the new zones, by translating existing zones, has the potential to undermine rather than support substantial bodies of strategic work undertaken by local government since the introduction of the new-format planning schemes. The effect of this will be contrary to the objectives of certainty and community responsiveness.

The proposed reforms are substantial. They do not represent a mere 'tidy up' or de-cluttering of current provisions. Their implications for the function of urban areas, the success of businesses, the efficiency of infrastructure and transport networks, and private property rights and values, require careful scrutiny and a transparent process of evaluation and implementation.

PIA Vic therefore welcomes the appointment of an Advisory Committee to review the new zones. This suggests a more measured process of implementation than was indicated in the material originally released. This is not a substitute for clear strategic justification at the time of the draft zone release, as the Advisory Committee's task will be complicated by the lack of clarity about the purpose of many of the changes. However it is hoped that this will allow opportunity for an appropriate re-evaluation of the proposals based on clear statements of objectives and assessments of the consequences of the proposed changes.

The balance of this submission addresses the key elements of the proposed reforms and provides PIA Vic's response and recommendations.

### **3. RESIDENTIAL ZONES**

#### **3.1 Introduction of three new residential zones**

PIA Vic supports the replacement of the Residential 1, 2 and 3 Zones with the Residential Growth, General Residential and Neighbourhood Residential Zones.

Reforms of this nature have been mooted for some time and the concept of 'go-go', 'slow-go' and 'no-go' residential zones is broadly consistent with the residential strategies of many municipalities. These strategies already sit within many planning schemes, having been supported by Planning Panels and the State Government, notwithstanding that they do not readily align with existing statutory tools.

Three key issues arise in relation to the manner in which the zones are implemented:

- Clear strategic guidance will need to be provided about how and where the conservative Neighbourhood Residential Zone is applied. This is necessary to avoid a situation where housing supply and affordability is diminished by a lack of opportunities for reasonable infill development.
- Similarly, the degree to which ResCode standards may be varied needs to be monitored in order to avoid a return to the pre-VPP situation where multiple residential codes apply across the State.
- How the new residential zones will be implemented, the proposed timetable, and what resources (if any) will be allocated to local government in the implementation of the new zones.

### **3.2 Permit triggers for dwellings and subdivision**

The proposed new and modified zones reduce the permit trigger for a planning permit for one dwelling on a lot to 80sqm or 200sqm in the proposed zones.

While core ResCode provisions would still be applied through the Building Regulations, the permit triggers appear to be arbitrary and excessively liberal. No explanation has been provided as to how these triggers were chosen or what their implications may be. The proposed triggers may compromise the purposes of the zones that support neighbourhood character. For example, it would be extremely difficult to support tree retention and planting with such generous exemptions.

It is noted that the current provisions are based on planning controls extending back at least twenty years (to the *Victorian Code for Residential Development: Subdivision and Single Dwellings 1992*) that are based on the 300sqm figure. Reducing the threshold size without developing revised design codes that take into account the reduced lot sizes is likely to lead to poor design outcomes and an increase in conflict at the planning application stage. High quality design on small lots requires different design approaches to those contemplated by the current code.

If the revised lot sizes are adopted more work would be required to develop codes that would work with the revised lot size thresholds.

### **3.3 Public notification and appeal provisions in the Residential Growth Zone**

One of the reasons why the Residential 2 Zone has not been widely adopted is because it exempts development from public notification and appeal rights. The lack of flexibility in relation to this exemption was seen as a barrier to the use of the zone by some Councils. Nevertheless, the zone has been used in some locations and there may be others where, subject to sufficient strategic justification and community engagement, the use of exemptions is appropriate.

It is submitted that the Residential Growth Zone should include an option for public notification and appeal rights to be exempted by schedule in order to provide the flexibility that the Residential 2 Zone lacks.

### **3.4 Non-residential uses**

The broadening of capacity to allow non-residential uses in residential areas is supported in principle insofar as it has the potential to reduce car dependence, increase suburban vitality and support micro businesses. Conversely, there is a need to ensure that these reforms do not dilute and fragment activity centres and lead to land use conflicts.

However, PIA Vic does not support changing the uses Medical Centre, Food and Drink Premises, Office and Shop from discretionary to as-of-right uses. These uses have the potential to cause adverse amenity impacts on adjoining properties and therefore should be subject to a public notification and approval process. If these were to be kept as Section 1 uses (not PIA Vic's preferred outcome), this should at least be subject to conditions surrounding operating hours.

The rationale behind the conditions proposed for several of these uses, which require the use to be within 100m proximity to a commercial zone and a shared street frontage with the land in that zone, is not entirely clear. It is recommended that further studies be done of the sites that would fall within such criteria, as it is anticipated that some anomalous and undesirable situations may arise.

For example, small outlying neighbourhood activity centres, or small commercially zoned premises retained as a legacy of historical uses of sites, could create large new areas for commercial uses to establish with little obvious distinction from their surrounding residential precincts. Activities that would better serve their community purpose in the established neighbourhood centres (many of which are already marginal) may be more widely dispersed as such uses scatter into nearby streets. The form of centres may be weakened by poorly defined 'edges' as uses disperse up to 100m along the adjacent streets. This could have negative impacts in both the functioning and urban design of small suburban and regional centres.

Including these uses in Section 1 would also avoid the need for a permit for buildings and works, resulting in potential conflicts with neighbourhood character. Further consideration also needs to be given to whether the building regulations applicable to commercial buildings would provide sufficient amenity protection for neighbours of such buildings. On a small lot, such premises would have less scrutiny over their amenity impact upon neighbours than would apply to a dwelling. This is considered an anomalous outcome given the purpose of the zone.

It is submitted that the intent behind these changes needs to be more clearly articulated and reconsidered to ensure that the changes have the desired effect.

### **3.5 Height provisions**

The proposed height provisions will support certainty for residents and provide an appropriate level of discretion commensurate with the objectives of each proposed residential zone. The inclusion of

mandatory height provisions reinforces the comment made previously that the application of the zones will need to be strategically justified in order to ensure that infill development is not stifled.

Height provisions should be applied to non-residential as well as residential uses given the broadening of discretion envisaged by the review.

### **3.6 Place of worship**

Places of worship often attract congregations from locations well beyond the local area. Peak activity usually takes place on weekends and often during public or religious holidays; coinciding with times when local residents seek to take advantage of the quiet enjoyment of their properties. The removal of conditions relating to social or recreation activities and site area limits could result in significant residential amenity and neighbourhood character impacts. The potential impact of these activities warrants oversight by the planning system.

### **3.7 Low Density Residential Zone**

PIA Vic supports the proposal to modify the provisions of the LDRZ so that the minimum lot size allowed in a schedule is reduced to 0.2 hectares where reticulated sewerage is available. The current minimum is 0.4 hectares whether or not reticulated sewerage is available.

This provision will support further consolidation in established areas where reticulated services are available and is therefore supported. The zone purpose does not acknowledge that reticulated sewerage is available in some LDRZ's. It should be modified to reflect this.

The proposed minimum lots size of 0.2 hectares should apply as a default minimum lot size where there is no schedule to the zone.

## **4. RURAL ZONES**

The proposed changes to the Rural Zones require careful consideration as their implications will vary widely across the State. The economic drivers and development pressures in peri-urban areas surrounding Melbourne are completely different to those in other parts of Victoria. A 'one-size-fits-all' response to liberalise rural planning provisions will therefore have very different implications in different parts of the State.

Rural Living and LDRZ are often used as a way to create a buffer between rural residential types and farming zones. Smaller lot sizes may undermine this approach and could also create infrastructure issues. In addition, changes to the Rural Living and LDRZ could provide an oversupply of existing rural and residential land and undermine local property markets, how this plays out should greatly depend upon Settlement Strategy or Framework Plans that Councils have endorsed.

### **4.1 Alterations and additions to dwellings and farm buildings**

The proposed exemptions relating to farm buildings and dwellings are consistent with the purposes of the rural zones and are therefore supported. In locations with particular environmental or landscape sensitivity there will remain the option of applying overlays to trigger buildings and works permits where this is strategically justified.

### **4.2 Land use changes**

The removal of conditions requiring that land uses be undertaken 'in conjunction with' Agriculture is not supported. The removal of these conditions has the potential to undermine agricultural activity

by pricing farmers out of land, increasing municipal rates, creating land use conflicts, and fragmenting viable land parcels.

In green wedge and peri-urban areas the high value of land and proximity to major population centres will create the potential for ribbon development along major roads. This will diminish the attractiveness of these localities for tourism and create land use conflicts with productive agricultural activities.

In regional areas the proposed changes have the potential to undermine the objective of retaining local populations by diverting potential economic activity from small towns. This will dilute the service and tourism offer available in towns, reduce the effectiveness and efficiency of infrastructure investment, and make it more difficult to justify urban design improvements within town centres.

The existing Rural Activity Zone has the capacity to provide the type of flexibility envisaged by the proposed reforms. Many municipalities have undertaken land use strategies that have carefully considered where greater flexibility is consistent with economic, social and environmental objectives. The proposed reforms will undermine these strategies.

Finally, the proposed changes have the potential to undermine the recommendations of the 2009 Victorian Bushfires Royal Commission. While buildings can be designed to address Bushfire Management Overlay provisions, the dispersion of schools, accommodation and tourism facilities throughout bushfire-prone areas appears contrary to the objective of placing priority on the protection of human life.

While some greater discretion may be appropriate in relation to accommodation and tourism uses, clear decision guidelines are required to ensure that these activities do not adversely impact upon agriculture and the resilience of smaller towns. Some uses such as residential and retirement villages, that clearly should not be located in agricultural areas, should remain prohibited.

#### **4.3 Section 173 agreements**

The removal of Section 173 agreements requirements from subdivisions is not supported. These provisions were put in place to address the incremental fragmentation of land through successive dwelling excisions. This 'suburbanisation by stealth' was particularly prevalent in peri-urban and coastal areas prior to the introduction of the VPP.

#### **4.4 Farming Zone**

The inclusion of an objective to support population retention in the Farming Zone is not supported. This objective is at odds with the primary purpose of the Farming Zone, which is to provide for the use of land for agriculture. The objective of population retention would contribute to a fragmentation of rural land and potentially undermine the sustainability of small rural towns by diminishing their land values. The dispersal of dwellings throughout rural areas in an *ad hoc* market-driven manner also has the potential to place individuals and communities at risk of natural hazards, such as bushfire. This type of population dispersal was specifically criticised by the Bushfires Royal Commission.

On the other hand, the objective to protect and enhance natural resources and biodiversity should be retained. This objective is consistent with contemporary agricultural practices.

#### **4.5 Rural Living Zone**

The reduction of the default minimum lot size from 8 hectares to 2 hectares for subdivision and development of dwellings in the Rural Living Zones is supported provided that the capacity for

Councils to include a schedule requiring larger minimum lot sizes is retained. This will enable further development to occur within existing Rural Living Zones, ideally taking pressure off rural zones for the development of dwellings.

Nevertheless, for the reasons outlined above, translation of the default minimum sizes should not be automatic as this should only occur in locations close to settlements and where bushfire and flooding risk has been thoroughly assessed.

PIA Vic's support for this reform is contingent upon existing schedules being retained.

#### **4.6 Place of Assembly**

The inclusion of Place of Assembly as a discretionary use is not supported if such uses will involve the construction of permanent structures. If the intention is to remove the prohibition on temporary events in the Farming Zone then this could be achieved by creating a new exemption, land use category or code of practice that would retain some level of control over the nature, frequency and duration of events.

### **5. COMMERCIAL ZONES**

PIA Vic has substantial concerns with the proposed reforms to the commercial zones. While the proposition of streamlining the business zones and supporting mixed uses is supported, PIA Vic believes that the proposed zones will not achieve the intended objectives and will undermine broader strategic objectives. These concerns are exacerbated by the proposed changes to the Industrial zones, discussed in the next section.

In particular, the logic behind and relationship between the proposed zones is questioned. An important role of the Business 1 Zone is to focus the most diverse and intense activities into retail cores to create vibrancy and support complementary business activities. The proposed zones dilute that potential by introducing a range of new uses as-of-right and create ambiguity between the objectives of the proposed commercial zones, the Mixed Use Zone, Industrial 3 Zone and the proposed Residential Growth Zone.

#### **5.1 Office and education uses**

PIA Vic does not support the proposed changes that would allow Office and Education uses to locate at ground floor level in the Commercial 1 Zone without the need for a planning permit; and to remove the capacity to cap office floor space through a zone schedule.

Ground floor offices have the potential to dilute retail activity in activity centres, to the detriment of vitality and pedestrian convenience. Allowing offices that do not have a customer service focus at ground level without the need for a permit would run counter to most contemporary retail strategies. Similarly, the capacity to cap office floor space in retail centres should be retained to enable shopfront activity to be focussed to the benefit of both consumers and businesses.

#### **5.2 Accommodation in the Commercial 1 Zone**

The definition of Accommodation includes a wide range of residential and tourism-related activities. While these uses are appropriate within commercial areas and have the potential to add to their vitality, the removal of permit requirements may have adverse implications for street life and business flexibility.

A key concern relates to the potential for accommodation uses to occupy prime 'active' ground floor space in the core of activity centres. Without the need for a permit there is no mechanism to ensure that 'active' components of these uses, such as reception areas, etc. are located at ground level. This has the potential to create activity 'gaps' within core activity areas, to the detriment of vitality, walkability and passive surveillance.

Accommodation uses generally require higher levels of amenity than commercial uses. Commercial core areas by their very nature are noisy and active. Without a permit trigger there will be no capacity for responsible authorities to manage potential land use conflicts or require, through buildings and works permits, mitigation measures such as sound proofing and double-glazing of windows.

### **5.3 Supermarkets and Shops in the Commercial 2 Zone**

The proposed inclusion of Supermarket and Shop uses in Section 1 of the Commercial 2 Zone is not supported. It is envisaged that this zone will apply to non-core precincts within activity centres. Allowing 'core' retail uses without the need for a planning permit has the potential to undermine long-standing structure planning for activity centres and diminish the vibrancy of activity centre cores. If greater flexibility is sought these types of uses should be included in Section 2, noting that they are currently prohibited in the business zones that the Commercial 2 Zone is likely to replace.

### **5.4 Industry in the Commercial 2 Zone**

The proposed changes will allow Industry to locate anywhere in a Commercial 2 Zone without the need for a permit, subject to some restrictions and references to Clause 52.10 – Uses with Adverse Amenity Potential. PIA Vic does not support this proposed change on the basis that it does not provide for sufficient protection of residential areas from adverse impacts associated with industrial activities. Even relatively benign industrial uses that do not meet the thresholds of Clause 52.10 may have significant impacts on residential amenity and the operation of adjoining businesses. As such a permit requirement is warranted.

It is considered that caution should be used before relying on Clause 52.10 as a primary means of amenity protection in the structure of the zones. The list of processes in the clause is difficult to apply and police and it is understood that the operation of this clause is under review by DPCD. It should not be considered a substitute for the separation of potentially high impact uses through the land use tables of zones.

Proliferation of industrial uses throughout commercial zones also creates potential long-term problems with actual or possible contamination of land, which can greatly complicate the process of transitioning this land to residential or other sensitive uses at a future date.

## **6. INDUSTRIAL ZONES**

Combined with the recent changes to the treatment of restricted retail (amendment VC88), the new changes would see the following uses able to establish in one or more of the industrial zones:

- Offices
- Supermarkets under 2000m<sup>2</sup>
- Any shop adjoining a supermarket

- Shops of any size that sell goods categorised as restricted retail, including various goods not necessarily reliant on large floor areas such as office supplies, pet goods, party supplies, home entertainment, and baby and children's goods.

This incremental 'commercialisation' of the industrial zones raises concerns about the weakening of activity centre policy, the loss of available industrial land and associated land cost increases for industry, the erosion of buffers for high impact industries, land use conflicts and traffic congestion.

It is noted that the changes have been supported with reference to the Productivity Commission's November 2011 report *Economic Structure and Performance of the Australian Retail Industry*. While the Commission's points about the need for flexibility are noted, it is also noted that the Commission has also acknowledged the need to protect industrial land supply. In another publication, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments* (April 2011), it noted (at page 354):

*'Land use zones... in activity centres which are less prescriptive and exclusionary to businesses and industrial zones which are available only to industry would enable planning and zoning systems to facilitate improvements in the competitiveness of city land use.'*

PIA Vic endorses this comment and considers that some liberalisation within each broad category of zone (commercial and industrial) is preferable to changes that continue to allow the erosion of barriers between commercial and industrial zones.

More broadly, there needs to be attention given to issues of land supply to ensure there are adequate suitable sites for commerce and industry, rather than simply allowing commercial uses to flow into industrial areas. The currently proposed zones (and the recent changes to restricted retail) seem to assume that there is a shortage of adequate commercial land but an ample supply of industrial land, justifying some sacrifice of the latter for the former. This proposition requires further justification. Even if true, it may only be a transient situation and therefore better addressed by means other than changing zones of state-wide application.

### **6.1 Supermarket uses**

The proposal to allow small supermarkets in the Industrial 3 Zone without the need for a planning permit is not supported. If implemented this proposal has the potential to undermine the vitality of activity centres, create land use conflicts, promote car dependence, and reduce the efficiency of public transport networks.

The objective of increasing supermarket competition is supported. An alternative option may be to include Supermarket as a Section 2 use (with a condition limiting size) and applying decision guidelines so that the implications of out-of-centre development are fully considered as part of the assessment of the application.

### **6.2 Office floor space**

It is recognised that there is a need to reconsider the floor space caps on office in industrial zones to address contemporary business practices, such as businesses that require the co-location of office and industrial functions. However it is considered that complete removal of the floor space limits may have undesirable consequences if clear tests for offices in industrial zones are not established. The pressure on Councils to approve office buildings in industrial areas is likely to be considerable.

It is recommended that further strategic work be undertaken about alternate controls that may facilitate modern business practices without eroding industrial areas. These may include one or more of the following:

- Alternate conditions applying to the office use that better distinguish between those legitimately benefiting from industrial uses and those that are better located in activity centres.
- Guidance (perhaps in the form of a practice note) as to what kind of office may be considered ancillary to an industry.
- Review of industrial and commercial land supply to ensure the impacts of liberalising controls over offices do not disadvantage industry.

Rezoning as required to create precincts for co-located office and industry and dedicated precincts for industry.

## **7. TRANSITIONAL ISSUES**

How and when the zone changes take effect needs careful consideration. A number of VCAT and Panel Hearings currently underway or about to be heard could significantly have different outcomes should the changes be implemented and as such PIA urges some guidance on timeframes as soon as possible. PIA Vic would support a reasonable lead time for any of the changes, to provide some certainty for Councils, the community and the development industry in planning for change.

## **8. CONCLUSION**

PIA Vic welcomes the opportunity for reform and looks forward to working with the industry to refine and enhance our planning system. Importantly, others around the country (QLD, NSW) are looking to replicate many elements of the VPP's that this current suite of reforms are likely to be stripped back. To this end, detailed planning and zone provisions **must** emerge from a planning process that firstly clarifies principles and objectives, then advances regulatory responses – in conjunction with many other actions. How the zones could be applied and their relationship to local policy is a paramount consideration in any translation, as the unintended consequences of the proposed reforms would be extremely hard to “unpick”.