

**From the Office of the Mayor**  
Councillor John Chandler

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Our Ref: 13/01/02

17 September 2012

The Hon Matthew Guy MLC  
Minister for Planning  
Level 7  
1 Spring Street  
MELBOURNE VIC 3002

Dear Minister

## **PROPOSED PLANNING REFORMS 2012**

Thank you for the opportunity to comment on the proposed zone reforms released for comment in July 2012. Council considered the proposed planning zone reforms at its meeting on 10 September 2012 and has adopted the attached document as its submission for your consideration.

The impacts of the proposed changes are a major concern for the City of Stonnington. While economic growth is a desirable objective, the changes made to the zones have introduced other substantial changes with unintended and potential negative consequences. The political purpose of these reforms is to provide developers with greater opportunities for development and stimulate economic activity. The other purpose is to give residents greater certainty and stop redevelopment in select residential areas. Considering the two extreme perspectives, it fails to address the broader planning, economic and social consequences of the wider community. The reforms need to establish the case and justification for allowing short-term commercial interests at the cost of the longer-term interests of the community.

Council supports good design and good planned development across Stonnington and Metropolitan Melbourne. Streamlining the planning system through the use of such significant permit exemptions should not be at the cost of good design and good planning outcomes.

Council's assessment of the implications of the new zones has identified major concerns; these are set out in detail in Council's submission attached with this letter. The main issues are as follows:

- Lack of strategic justification and identification and understanding of economic and social impacts of the reforms.
- Expansion and dispersal of commercial uses into the residential areas adjoining Activity Centres.
- A lack of detailed information on key issues including transitioning to the new zones, consultation, resourcing, strategic context, current planning applications and VCAT appeals.
- Reduced residential amenity from 'as of right' commercial uses in residential zones and the intended expansions of Activity Centres into residential zones.
- The reforms encourage high density housing in all Activity Centres, without context or control.

- There is no economic study, no housing strategy, no capacity assessment or targets to provide the context which justifies the reforms.

The transitional time allowed for these reforms is a cause of concern for Council as the criteria under which the conversions for Residential zones will be assessed is not currently available, nor the nature and type of strategic justification that may be required to support the more restrictive zones. One of the key deficiencies with the reforms is that it has been released and will be implemented before the development of the new Metropolitan Strategy.

It is therefore requested that the concerns submitted by Stonnington City Council are addressed and the associated policy and an implementation framework is released.

Stonnington City Council requests participation in any further consultation on zone reforms and seeks involvement in the design of the provisions which will apply to Stonnington Municipality. Karen Watson, Executive Manager - Sustainable Future on 8290 1175 is Council's nominated representative in this matter. Please call me if you would like to discuss the submission.

Yours sincerely

**CR JOHN CHANDLER**

*Mayor of the City of Stonnington*

*Attach 2.*

# THE CITY OF STONNINGTON RESPONSE TO THE PLANNING ZONE REFORMS

## Introduction

The City of Stonnington provides the following comments on the proposed new and amended zones.

Council met on 13 September 2012 and endorsed the submission of comments prepared by the City of Stonnington. The submission is structured in three parts.

The first part of the submission sets out concerns the Council has on each zone and issues that should be considered.

The second part is orientated towards implementation of the proposed zones.

Part three looks at the positive aspects of the proposed zones on the City of Stonnington.

## Process

Council has the following general concerns with the process:

- **Timing for implementation:** The implementation process is complex and the criteria for new planning zones needs to be introduced effectively. A twelve month turn around to implement the new zones including associated schedule and policy changes will significantly impact Council resources and the successful roll out of the new zones.
- **Limited consultation:** The process to develop and test the Residential zones has not been undertaken for the other reform areas. Furthermore, Council is concerned that the testing that was undertaken did not include any inner urban Councils where impacts are quite significantly different. A stronger working relationship and partnership between State and local government on issues is desirable.
- **Evidence base:** Lack of strategic justification and identification and understanding of economic and social impacts of the reforms. No evidence base has been provided (for example, economic study, housing strategy, capacity assessment) or targets to show the context which justifies the reforms.
- **Impact assessment:** Although some elements of the reforms are welcomed and indeed overdue, other aspects will create significant and unintended consequences and in their present form, may undermine existing policy and strategic work. Wider implications need to be understood through economic and social analysis. Lack of height controls outside residential uses are of particular concern, as well as high density residential development in the Commercial 1 Zone which is proposed to include all existing Business 1 and 2 zoned land covering neighbourhood (small) activity centres.
- **Criteria for Residential Zones:** There is lack of criteria available for the implementation of the Residential Zones, and therefore understanding of the translation of these zones is difficult for both Councils and the community.

- **Lack of detail:** A lack of detailed information on key issues including transitioning to the new zones, consultation, resourcing, strategic context, current planning applications and VCAT appeals. The different intentions and potential criteria for all the zones are not clear. The inclusion of clear and distinct zone ‘purposes’ is critical to implementation. Clarity is needed on the process for implementing the new zones and the criteria to assess converting existing properties to the new zones.
- **Definitions:** There is a lack of explanatory reference to particular recommendations e.g. high density, medium density and ‘same street frontage’. This lack of definition suggests that there is likely to be much debate about the meaning of these provisions in future.
- **Community Engagement:** It is essential that the community can adequately be involved and understand the changes. To date, there has been little in the way of explanatory material that explains the changes other than political mandates and fact sheets which provide little explanation and justification about the changes. It is particularly difficult for the community who may not be experts in planning to understand the implications. It has been suggested that different types of zones will be rolled out over time – this is welcomed. 12 months will prove a difficult time to accurately involve and consider community input for conversion of the residential zones.
- **Plan led system:** The zones should be enforced with high regard to current state and local policies and based on a robust evidence base.

## General

- A shift of more land uses from Section 3 (prohibited) into Section 2 (permit required) and Section 2 into Section 1 (‘as of right’) will make more intensive and non residential uses in residential zones more prevalent. The type of uses now permissible in Residential zones includes shops, food and drink premises, offices and medical centres. The likely amenity impacts of this have not been considered. This economic impact of these changes of uses which typically set up within activity centres needs to be considered. The impact on the consolidation of shopping strips also needs to be considered. This is particularly important for Stonnington with a great number of precincts with strip shopping.
- Objectives of Stonnington’s Municipal Strategic Statement (MSS) will be challenged by the introduction of high density residential development in all Activity Centres including neighbourhood activity centres.
- Many policies in the MSS will become redundant without triggers for a permit.
- It is anticipated that Overlays will play a bigger role in the implementation of the new zones – this is contrary to what the Ministerial Advisory Committee Report recommended.
- The pink information sheet released as part of the New and Improved Residential Zones is inconsistent with what is stated in the proposed zones. All documentation needs to be consistent so the community and other stakeholders are clear about what will apply and what they can comment on.

- The changes to introduce as of right commercial use and development will exclude the ability of Council or VCAT to apply any form of state or local policy; standard provisions (regarding amenity, hours of operations, car parking location etc); standard conditions and contribution requirements.
- The impact of the proposed changes will remove from decision making, consideration the quality of building design and amenity impacts.
- The political purpose of these reforms is to provide developers with greater opportunities for development and stimulate economic activity. The other purpose is to give residents greater certainty and stop redevelopment in select residential areas. In doing so, it fails to address the broader planning, economic and social consequences of only considering these two extreme interest groups. Where is the anticipated growth supposed to be accommodated – the Capacity Study needs to be released to inform the future development of Melbourne.

### **Residential Zones**

- The Residential zones now make explicit reference to a type of density within the purpose of the zone. For example, the Residential Growth Zone refers to medium density and the Mixed Use zone refers to higher densities. It is not clear what the definition of medium or higher density is. Furthermore, there does not seem to be a great deal of distinction between the Residential Growth Zone and the General Residential Zone – Council questions the need for three zones.
- While the NRZ will offer residential protection now, it may create problems in the future if communities wish to develop their area. This will necessitate a change to the zoning which may prove to be difficult.
- The provision for commercial ‘creep’ into residential areas near existing shopping centres is a concern. This would undermine existing commercial activity within identified retail precincts.
- Council is concerned with the proposed expansion and dispersal of commercial uses into the residential areas adjoining Activity Centres and reduced residential amenity from ‘as of right’ commercial uses in residential zones.
- Allowing new offices, restaurants and takeaways without a permit within 100m of a commercial zone coupled with no requirement for a permit for building and works is an extreme move and will provide no opportunity to consider the amenity impacts of such uses. This will lead to an elongation of strip based activity centres and gradually cause significant change to the peripheral areas of activity centres. For centres which have streets running in a north south and east west fashion, this means that activity centres will expand not only on main roads but also on local roads and side streets up to 100 metres from the edge of the Commercial 1 zone boundary. This will result in a coupling of residential and non residential uses leading to amenity impacts and interface issues. This proposal has not been well thought through. The absence of control via the planning scheme will lead to an increase in complaints that will need to be dealt with by other mechanisms such as nuisance notices and local laws.

No consideration has been given to loading and unloading requirements, car parking, advertising, display of goods, trading hours, built form etc.

- To allow for small shops to be built within 100m of an existing retail centre would mean a large area of existing residential development around centres could be subject to ad-hoc conversion to retail. In the absence of some more justification this change would appear to be of little value to retail or residential amenity.
- Council has concern for 'as of right' medical centres, offices, shops and food and drink places (including restaurants) in the General Residential and Residential Growth Zones. This change in approach has never been canvassed with the community and will come as a surprise to many living in the relevant affected areas.
- There has been no assessment of the impact of reducing minimum thresholds (lot sizes in NRZ and RGZ) to less than 80m<sup>2</sup> and less than 200m<sup>2</sup>. This is likely to result in an outbreak of amenity issues having to be resolved by registered building surveyors according to quantitative standards. This needs to be re-assessed. For instance, has there been any assessment of the current system and whether it has been successful or not.
- A4 and B7 – Building height standards have been removed from the Residential zones as a relevant and adjustable Clause 54/55 standard. It is noted that a maximum building height is still able to be included in the proposed Schedule to the zones. The removal of reference to A4 and B7 however would suggest that changes to ResCode are also required. This needs further clarification.
- The reforms encourage high density housing in all Activity Centres, without context or control. This is a concern.
- The default density for the NRZ is two dwellings on a lot. A variation and greater density than two dwellings is permissible if the Schedule to this Zone specifies something greater. The setting of a standard will inevitably lead to an inference that two dwellings per lot is acceptable when it will not always be. There is concern that a greater dwelling density will bring the outcomes achieved through the application of the NRZ closer to that of the GRZ and RGZ. If the intentions of the NRZ are to specify a lesser intensity of use then consideration should be given to enabling a maximum density that will not compromise the intentions of the other zones.
- Concern that the maximum building height only applies to residential development. There needs to be the same or similar policy applied for building heights for non-residential section 1 uses.
- There are no permit triggers for buildings and works with non-residential uses that are section 1. It is not clear how the Decision Guidelines under Non-residential use and development will be triggered.
- It is not clear how changes specified in the schedule will sit in relation to Clause 54 and 55 standards and objectives.
- There are sections where Business zones are directly opposite Residential zones on the same main road – does “same street frontage” apply to both sides of the road? If

so, it may create “as of right” offices and restaurants opening in pockets just outside the business zones. This may raise serious amenity concerns given patron numbers and noise, hours etc cannot be controlled now many uses are Section 1.

- There may be very different community views about where the new ‘General Residential’ and ‘Residential Growth’ zones designed to promote and support high density redevelopment should apply. An initial community response without the context of a Metropolitan Strategy could be that no change is appropriate. Alternatively while elements in the community seek certainty others want flexibility as well.
- Council supports ResCode standards relating to impervious surfaces (A6/ B9), walls on boundaries (A11/B18) and landscaping objectives (B13).
- Council supports the removal of the following Condition for Place of Worship- 'must be no social or recreational activities' in a residential zone.
- Council supports the 250sqm Condition for Places of Worship in a residential zone. However, it is noted that if the 250 sq metre limit is not met, then according to the current drafting, the use of land for a place of assembly becomes prohibited. Coupled with similar provisions in the Commercial 1 zone, it would seem that Places of Worship greater than 250 square metres are now prohibited in most of the metropolitan area of Melbourne. It is unclear if this was intended.
- It is unclear how the new zones will accommodate all the expected residential growth. It is particularly difficult without the release of the housing capacity work. It appears all high density residential growth will be accommodated in activity centres.

## **Commercial 1 Zone**

According to the direct conversions outlined in the draft zones, only Commercial 1 Zone applies to Stonnington as it converts existing B1Z, B2Z and B5Z. The purpose of the Commercial 1 zone is to provide for a mixed use vibrant activity centre which provides for high density housing. This categorisation is irrespective of the size or role of the activity centre. In this regard, Council submits that:

- In seeking to reduce controls over development in commercial areas, the benefits of a quicker or no approval process could be outweighed by the costs of uncontrolled development.
- The explicit reference to high density residential development in the context where high density is not explained or defined means that all centres irrespective of size will be required to accommodate high density housing. High density housing is undefined but is generally regarded as development in excess of 4 stories.
- The wider range of uses included in the Commercial 1 Zone do not allow a more restrictive buffer area between larger retail areas and residential areas. Have the impacts of this been considered?

- The impact of reduced controls in commercial centres would require accelerated structure planning or similar to protect these centres from inappropriate development and expansion. Resources to undertake this need to be considered.
- The broad range of uses which have been shifted into section 1 are not always consistent with proper activity centre planning and development. Yet, the designation of those activities as section 1 means that there will never be a capacity for a responsible authority to consider the appropriateness of such a land use.
- The impact of reduced controls in commercial centres suggests that structure planning is more important. However, the designation of more uses as as-of-right and the removal of floor space limits as a planning tool will leave little room for structure plans to operate in the absence of the imposition of other planning controls such as Development Plan Overlays, Design and Development Overlays etc. This will lead to an increase in the layering of planning controls when the intent of the review of planning schemes over the past few years has been to try and reduce the layering of controls. Similarly, with the absence of permit requirements and floor space limits in these areas for many more uses, there will be little scope for policy to have any impact or relevance.
- Designs at smaller lot sizes will not trigger a permit and generally have greater difficulty in complying with ResCode amenity regulations.
- There is a risk that buildings may be converted to residential premises in commercial main streets creating residential 'breaks' in retail and commercial street frontage.

### **Industrial 3 Zone**

Stonnington has very limited industrial zoned land. It is only within Industrial 3 Zone. In relation to this zone, Council submits that:

- Promotion of supermarkets in the industrial area is not necessarily a solution to fading retail activity. It is likely to result in a revaluation of industrial land according to its potential commercial purpose and lead to a gradual squeeze on industry.
- The better process is for councils to review and rezone industrial areas to a Commercial zone if it wants to encourage retail in these areas or any particular area. Retaining Industrial employment is important to the city and the economy.
- Supermarkets should require a permit and shops should also require a permit in order to protect industrial employment.
- There is no definition of supermarket and it is uncertain what happens if a supermarket ceases to operate – do the associated shops become non-confirming – this needs to be clarified.

### **Mixed Use Zone**

- It is noted that this zone is existing and generally fits with the current provisions.



- A new purpose added states to 'provide for housing at higher densities,' however there is no clarification on what "higher densities" means.
- This is an amended version of the existing Mixed Use Zone. It appears that higher density housing is suitable in the Mixed Use zone however, it is not clear whether any existing land in existing Residential 1 Zone is proposed to convert to Mixed Use Zone. For example, the area around shopping centres.
- A4 and B7 standards (one and two dwellings on a lot respectively) – Building height standards have been removed from the Res zones as a Clause 54/55 standard able to be altered in the Schedule. A maximum building height standard is still able to be included in the proposed Schedule to the zones. The removal of reference to A4 and B7 however would suggest that changes to ResCode are also required. This needs further clarification.
- Food and drink premises, small medical centres, offices and shops are permitted as of right (with no planning permit). These uses should require a permit. If they are allowed as of right they may erode neighbouring residential amenity and impact on the streetscape character.
- Shop has been excluded from Section 2. This means that any shop over 150sqm becomes prohibited. This is an interesting change given the direction of the reforms and seems to run counter to the general ethos. This needs clarification.

## **Implementation**

If it is thought that there will be a standard translation of the zones into best fit zones, then consideration will need to be given to the implications of each rezoning having regard to the particular circumstances of the area. As the new zones allow much more (as of right) than the existing zones, no translation is likely to be neutral.

There is a need for more meaningful information dissemination on the implementation of these zones. DPCD should facilitate a streamlined and properly resourced implementation programme. The reforms should also introduce additional transparency and accountability to the planning system which assist in stakeholder and community engagement.

## Residential

### 1. Schedules

- Building heights – The difference between building heights in the Residential Zones requires justification before they can be implemented and delivered. A solution could be to allow Councils to set their own height limits
- Enforcement of residential amenity will require some control over non-residential heights; this should be set out in the schedules to avoid discrepancies in height controls in these zones.
- Triggers need to be set out. Standards A4 and B7 have been removed. At what stage does a development trigger a permit?
- It needs to be clear whether a schedule to the zone is required and what happens if there is no schedule approved into the scheme (as all the residential zones include the implementation of a schedule in their purpose).

## 2. Roll-out

- The zones should be implemented through the amendment process and allowances should be given for early reviews to be undertaken if circumstances warrant it.
- To achieve the most efficient outcome, it is considered a longer time frame (24 months) is needed to provide for a coherent approach in terms of overall delivery.
- Transitional arrangements – there is no mechanism to consider implementation issues or to test new or modified provision prior to their implementation. Adequate regard needs to be had to unexpected occurrences and mitigation measures should be in place.

## 3. Criteria

- Managing expectations from the community – State Government need to proactively lead on engaging and managing the expectations of the community. Should the Council find itself in a primary position to undertake this engagement, they should be properly resourced to do so in order to reduce adverse effects on community health, safety and wellbeing associated with licensed premises, restaurants etc in terms of their location and number.
- Managing Residential amenity – need to avoid depreciation of areas due to ad hoc development and the impact of noise and air pollution and visual amenity.
- Justification for applying zones - if the intention for the NRZ is to be for HO's and NCO's then this needs to be clear in the criteria. Council also seeks clarification on Government's position on Main Roads. Currently Government policy *gives protection to established residential neighbourhoods that are located outside areas designated for intensification. This helps facilitate the government's urban renewal policy for Melbourne, to direct large-scale urban renewal in specifically designated sites.*

Clause 16 Housing in the State Planning Policy Framework states development should be: *On or abutting tram, train, light rail and bus routes that are part of the Principal Public Transport Network and close to employment corridors, Central Activities Districts, Principal or Major Activity Centres.*

## Commercial, Industrial and Mixed Use Zones

### 1. Roll-out

- Transitional arrangements – there is no mechanism to consider implementation issues or to test new or modified provision prior to their implementation. Adequate regard needs to be had to unexpected occurrences and mitigatory measures should be in place.
- Some existing land zoned B2 and B5 may not be appropriate to convert directly to Commercial 1 Zone. There needs to be a mechanism to convert such land into a new zone if the current proposals are adopted.

- Managing Residential Amenity – allowance of accommodation without a permit is a cause for concern - should be a schedule to this zone to enforce standards and local policy as dwellings are now an as of right?

## **Concluding Comments**

The changes being introduced by the reforms to the zones are very significant and will have far reaching implications. Council supports reforms to the planning system but reforms need to produce positive outcomes and a net community benefit.

Council supports good design and good planned development across Stonnington and Metropolitan Melbourne. Streamlining the planning system through the use of such significant permit exemptions should not be at the cost of good design and good planning outcomes.

Council wishes to be informed of what process DPCD will implement to ensure that Stonnington City Council is able to more fully explain its concerns before an independent or an expert forum.

- Council would like some clear points set out against which zones can be assessed and a mechanism in place to enable Council to make representations if there is a disagreement.
- A monitoring system put in place to examine the introduction of the new zones.
- Evidence that shows potential impacts on infrastructure without control over development in areas.
- Economic impact assessments that justify immediate change to commercial and industrial zones.
- A timeframe put in place for the assessment of amendments if the zones are to be rolled out via this system or delegated powers to the Council to adopt these reforms. The decision timeframes impact on the community and the stakeholders and planning outcomes.
- A reform fund – the resources involved in introducing, implementing and monitoring such changes are high and at the cost of the Council, this should be mitigate by the introduction of a fund.
- State Government need to proactively lead on engaging the community.
- Consideration needs to be given for reviewing other polices which may conflict with the objective of the proposed new zones.
- The Ministers Statement says that the new Neighbourhood Residential Zone is designed to protect neighbourhoods from inappropriate development. Council is concerned to protect all residential and commercial areas from inappropriate development not in just selected areas.
- Designs at smaller lot sizes have greater difficulty in complying with ResCode amenity regulations. As the present building system (Part 4 of the Building Regulations) is more prescriptive than planning, there will be more refusals to grant consent and report. Applicants will not be entitled to the level of discretionary interpretation permitted under the planning system;
- Under the Building system, refusals can be appealed at the Building Appeals Board. There will be an increased number of appeals, not only representing

the number of additional building sites, but the number of non-complying issues at each site. The Building Appeals Board is already stretched and will also need improved resources to deal with the increased volume and complexity of issues;

- The present building permit system does not provide for third party appeal rights. In the smaller lots this will put pressure on Council officers and potentially cause objector resentment;
- Expected increased levels of non-compliance in design and building work with relation to amenity issues in the areas that traditionally have been dealt with by Planning.