

9.1.6 Submission to the Proposed New Planning Zones

FILE NUMBER: SF12/949
ATTACHMENT

SUMMARY

On 17 July 2012 the Minister for Planning released for consultation a suite of changes to the residential, commercial and industrial zones. The stated intent of these changes is to simplify planning requirements, allow a broader range of activities to be considered and improve the range of zones to better manage growth.

This report sets out an assessment of the proposed changes and a recommended submission to the Department of Planning and Community Development (DPCD) to be received by 21 September 2012.

RECOMMENDATION

That Council:

1 Endorse the submission to the proposed new and amended zone provisions as set out in the attachment to this report.

2 Forward the submission to the Victorian Minister for Planning.

BACKGROUND

On 17 July 2012 the Department of Planning and Community Development (DPCD) released a suite of proposed changes to a number of zone provisions within the Victorian planning system. In so doing the Government has stated that it is seeking to implement its planning election commitments to:

- “Rebuild confidence in the planning system with more certainty and clearer rules.
- Create an environment for private sector investment and ensure investment can occur efficiently.”

Part of the actions undertaken to fulfil these election commitments include;

- Developing a new metropolitan strategy and regional growth plans to set a clear strategic framework for growth.
- Introducing the VicSmart fast track approval process to quickly decide straight forward applications.
- Developing the zone reform package to ensure that the right planning tools are in place to achieve strategic outcomes.

The above actions have been initiated in part as a result of a number of inquiries that have investigated the role of regulatory burden on the efficiency and performance of business, which have included:

- The Victorian Planning System Ministerial Advisory Committee;
- The VCEC *Inquiry into Victoria’s regulatory framework 2011*;
- The VCEC *Inquiry into Victoria’s tourism industry 2011*, and

- The Productivity Commission report on *Economic Structure and Performance of the Australian Retail Industry 2011*.

Key findings from these enquiries have been as follows:

- Greater economic investment can occur by improving regulatory systems;
- The planning system can create unnecessary uncertainty, time delays, costs to business and constrain productivity growth, and
- Reforms are needed to free up the planning processes around commercial investment.

During 2011, a Ministerial Advisory Committee was appointed to review the planning system in Victoria. In May 2012, the Minister released the Committee's report and the Government's initial response. Key recommendations which were identified that required further work included:

- Reviewing the permit and amendment processes to make them more efficient
- Reviewing the operation of aspects of planning schemes, such as how local policy and planning overlays work, and
- Improving how the development contribution system works.

The release of draft new zones is intended to address some of these elements of these recommendations. The stated reasons for the new zones are to:

- Simplify requirements
- Allow a broader range of activities to be considered
- Improve the range of zones to better manage growth

In terms of the changes proposed, the draft residential, commercial and industrial zones (and the rural zones) have been changed both in number and name, and also in structure and operation. Each zone now has more as-of-right or permitted uses than in their current equivalent zones. The purposes of the zones have also been varied to align with the new intent of their operation and there have been changes to decision guidelines, application requirements and, in some cases, the opportunity to include more specific requirements within the zones. Finally the draft zones propose to allow some uses which have previously been prohibited or subject to approval within the zone category.

Submissions in relation to these proposed changes, including suggestions in relation to the mechanics of their implementation, can be made until 21 September 2012.

DISCUSSION (see Attachment 4)

For the purposes of this report the proposed changes have been grouped into three main categories: Residential Zones, Commercial Zones and Industrial Zones. Of these three categories, three of the residential zone and the commercial zone changes are completely new replacements of the existing provisions. In terms of the industrial zones these represent use changes within the existing zone provisions rather than a complete redrafting of these controls.

Residential Zones

The existing Residential 1, 2 and 3 zones are to be replaced by **Residential Growth, General Residential** and **Neighbourhood Residential Zones**. In addition, the **Mixed Use and Low Density Zones** are proposed to be modified.

Key features of the three new Residential zones and the amended Mixed Use Zone are:

- Providing the opportunity for multiple schedules to be applied to a zone, recognising the many different character areas that can exist within a municipality. These schedules allow a range of ResCode standard provisions to be varied, such as height, site coverage, setbacks, open space, permeability and landscaping. The schedules also allow specific objectives, decision guidelines and application requirements to be stated.
- Removing permit requirements for a range of non residential uses, including food and drink premises, medical centres, offices, some shops and also modifying some of the conditions associated with existing as of right or permitted uses. There are differences in the uses allowed, between the different zones, which are discussed in greater detail in the attached submission.
- Single dwellings remain exempt from requiring planning approval in the zone however the lot size trigger associated with this exemption has changed. Currently the minimum lot size for exemption is 300m², and single dwellings on smaller lots are subject to planning approval. This could be varied to 500m², if justified, and specified in a schedule. The minimum lot size for exempt single dwellings is now proposed to be reduced to 80m² within the Residential Growth Zone and Mixed Use Zone (this cannot be varied), 200m² within the General Residential Zone (this can be varied to 500m² through a schedule) and 300m² within the Neighbourhood Residential Zone (this can be varied to a larger lot size requirement through application of a schedule). The Neighbourhood Residential Zone, which is stated in DPCD information to be used in areas designated for „urban preservation“ cannot restrict the number of dwellings allowed to be applied for to less than two per lot.
- There are minimal changes to the Low Density Residential Zone, other than to introduce the same as exemptions for medical centres and bed and breakfast premises as are proposed in the other new residential zones, as well as remove the conditions that takeaway food premises must comply with to be eligible to apply for planning approval. In addition, in locations with reticulated sewerage (which does not include Whitehorse’s Low Density area), the minimum lot size has been reduced to 0.2 hectares, rather than 0.4 hectares.

The major concerns with the new and amended residential zones relates to the greater allowance of non residential uses within these zones. The implications of the changes, for residential uses, are generally considered to be positive, and if enabled to be implemented, could lead to improvements and greater clarity in achieving desired outcomes for Council’s residential areas. However, the implications of the minimum lot sizes proposed are discussed in greater detail in the submission.

The key issue for residential uses will relate to the degree of justification required by the Minister to apply the new zones including the use of the schedules, in order to meet Council’s aspirations. The information supplied by DPCD provides no information relating to the criteria that will be used, nor the process to demonstrate the criteria, including the degree of public notice. For instance, it will be important for Councils to have the ability to adjust the scale of development within the Residential Growth Zone to reflect that what is seen as appropriate intensive development within a municipal context will vary across the metropolitan area and across the state.

The major concern with the new and amended residential zones relates to the increase in permitted and exempt non residential uses. No justification has been provided for the changes, other than the general statement of allowing a broader range of activities to be considered.

In their current proposed form, amenity issues for many non residential uses cannot be addressed, the suitability of these uses within many residential locations cannot be considered, nor whether the built form objectives for the location are to be achieved (as there are no buildings and works triggers). In addition, those uses which are now subject to planning approval have limited conditions attached, and in many cases, Council has no policy justification to determine whether or not these uses are appropriate. Far more rigid conditions should be attached to the non residential uses permitted.

In addition, the zones could be improved in terms of phrasing, for instance, in the wording of the objectives of the different zones, and in terms of the structure of the mixed use zone. These are discussed further in the submission.

Commercial Zones

The **Commercial 1 Zone** will replace the existing Business 1 Zone and the Business 2 Zone.

Key features of the Commercial 1 Zone are:

- Removing permit requirements for all Accommodation (other than a Corrective institution).
- Removing permit requirements for all retail uses (except for Adult sex bookshop).
- Removing the conditions for Education Centre and Office.
- Removing the permit requirement for Exhibition Centre.

The emphasis of the new Commercial 1 Zone therefore is to facilitate a mix of retail, office, business, entertainment and high density residential in activity centres. To achieve this and to support the Government's philosophy of market flexibility within activity centres, all of these uses are now as-of-right in the new zone without restrictions on floor area.

This is a substantial departure from the existing controls and may challenge some of the policy objectives Council has for specific activity centres or precincts within these centres. For example through the ability to limit the size of shops the current Business 2 Zone is able to be applied in such a way as to keep certain areas predominantly office based such as Tally Ho or precincts around Box Hill or Blackburn. The ability to achieve this outcome through the new zone is removed, thus opening these precincts to a full range of commercial and other uses that would previously have been controlled.

A further challenge of the new Commercial 1 Zone is that Office is as-of-right without any conditions. This means that offices could potentially occupy ground floor frontages in activity centres. This would displace other uses such as shops and restaurants etc., sterilizing these interface areas and undermining the objective of having active commercial streets.

The **Commercial 2 Zone** will replace the existing Business 3 Zone and the Business 4 Zone.

Key features of the Commercial 2 Zone are;

- Removing the permit requirement for Cinema, Cinema-based Entertainment Facility, Food and Drink Premises, Restricted Retail Premises and Trade Supplies.
- Removing the maximum floor area restriction for an Office.
- Making Accommodation (other than Dwelling that will continue to be a prohibited use) a permit required use.
- Exempting small-scale supermarkets and associated shops from a permit requirement. Larger supermarkets and stand alone shops require a permit.

The stated purpose of the new Commercial 2 Zone therefore is to create areas of office, appropriate manufacturing and industrial uses that do not affect the amenity of adjoining sensitive uses. Broadly the range of uses contemplated by the new Commercial 2 Zone is similar to those of the B3Z and B4Z that it will replace.

However, what is significant is the fact that many of the restrictions associated with uses such as office and industry have been removed. Also of significance is that Accommodation is now permissible in these areas whereas this is currently prohibited. Finally the as-of-right uses now include up to 500m² of Shop and 2,000m² of Supermarket as well as Cinemas and Cinema Based Entertainment Facilities.

These are significant changes to the range of uses currently permissible in the existing zones. This will have the effect of opening up parts of the City to a range of uses not contemplated for these areas and potentially in contradiction to many of Council's policies for these locations. MegaMile, for example, is within the B4Z and Council's policies encourage big box restricted retail premises in this location. Shops and Accommodation are prohibited uses while Office requires a permit. The new Commercial 2 Zone will open this area up to a range of uses not previously contemplated including limited Shops and Supermarkets, unrestricted Office, Accommodation and Cinemas.

Industrial Zones

The **Industrial 1 Zone** provides for manufacturing industry, the storage and distribution of goods and associated uses in a manner that does not affect the safety and amenity of local communities.

Key features of the proposed changes to the zone are;

- Changes to the existing Industrial 1 Zone propose to remove the maximum floor space area restriction for Office.
- Allows Council to specify preferred upper floor area limits for Office for various industrial precincts.
- Removes the ability to set minimum floor areas for Restricted Retail Premises through the Schedule.

The changes to the Industrial 1 Zone now allow Council to set the maximum floor area for office in the zone rather than have a set maximum permissible area of only 500m². This offers Council the flexibility and discretion of being able to determine how much office is appropriate in various industrial precincts across the City.

The **Industrial 3 Zone** provides for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required or to avoid inter industry conflict.

Key features of the proposed changes to the zone are;

- Removes the maximum floor area restriction for Office and allows Council to specify the maximum area limits for various precincts.
- Exempts small-scale Supermarkets (up to 2,000m²) and associated Shops (up to 500m²) from a permit requirement.
- If the floor area limits for the Supermarket and Shops are not met then these uses become prohibited.
- Removes the ability to set minimum floor areas for Restricted Retail Premises through the Schedule.

The discretion in relation to Office is a welcome change to the Industrial 3 Zone, in much the same manner as the proposed change to the Industrial 1 Zone. A more significant change relates to the ability to have a Supermarket up to 2,000m² and associated Shops up to 500m².

Currently Shop and Supermarket are prohibited uses in the Industrial 3 Zone. The degree of flexibility within these types of industrial areas to now have limited shops associated with a supermarket can be a positive one. It offers opportunities for these areas to now attract a wider public interest. Such a depth of activities can add vitality to otherwise potentially sterile industrial areas.

There is, however, a negative consequence of this change. The ability for supermarkets to establish outside of commercial precincts may potentially undermine the viability of those precincts. With land prices traditionally lower in industrial areas than in commercial ones it may be more attractive to the market to focus on the industrial location. This could displace industrial activities and also influence the convenient location of supermarkets within the mixed commercial areas.

Process for reviewing the submissions

No advice has been provided regarding how the submissions are to be reviewed, and how any changes are to be made. It is submitted that a transparent review process is required, which allows the implications, and not just the details, of the zones to be tested.

CONSULTATION

The assessment of the zones has been informed by a number of internal Council officer working groups. Council officers have also consulted with other Councils through the Eastern Group of Metropolitan Councils and have contributed to the submission prepared by this group on behalf of the region. Council has also commented on the Municipal Association of Victoria (MAV) submission on the proposed zone changes.

FINANCIAL IMPLICATIONS

The full potential financial impacts of these changes are unclear at this stage until such time as DPCD establishes the details of the process to be used to introduce the new zones. Depending on the process proposed to introduce the new controls, particularly any consequential changes to other parts of the Local Planning Policy Framework (LPPF) that may be necessary, there may well be costs associated with the preparation of a number of amendments to the Scheme to make these changes.

POLICY IMPLICATIONS

Council may be well placed to apply the new residential zones, as the 12 month timeframe aligns well with the completion of the Residential Development – Housing Delivery and Character Review project which is currently underway. The outputs of this work will allow Council to determine the best strategic fit for the application of the proposed new residential zones. The attached submission provides a broad overview of what degree of „proof“ or supporting strategic work and consultation should be required in order to introduce the residential zones, and generally makes the case that, if a strong and current strategic basis exists, which has been through thorough consultation with the local community, there should be exemptions from a full planning scheme amendment process.

The changes to the commercial zones represent a significant shift in philosophy in terms of how development in activity centres is considered. The Government’s emphasis of the proposed new Commercial Zones is one of market investment freedom. This effectively opens up commercial areas to a wide range of business, entertainment and residential opportunities by and large without Council having any control over these outcomes. This may be in direct contradiction to the policy objectives of Council’s various structure plans and other activity centre specific policies. The full impact of this will require detailed analysis in order to ensure that Council’s policy objectives are able to be successfully advanced through the application of the new zones.

CONCLUSION

On the whole the proposed changes to the residential zones are considered positive for residential development, as Council can provide more specific and stronger controls to provide clearer direction to developers and enable community aspirations to be achieved. Allowing a greater range of non residential uses, in specific locations, may provide convenient access to local services and therefore be beneficial to the community. However, these uses and development should also need to satisfy clear amenity and built form outcomes. The best approach to achieve this is still being explored.

The changes to the commercial zones open up a wide range of development opportunities in activity centres and will mean that the market will determine the shape and makeup of these centres more so than land use planning and policy. This may represent a significant challenge to achieving some of the specific policy and land use objectives that Council has for its activity centres and specialist areas such as Tally Ho and MegaMile. By broadening the range of as-of-right uses in the new Commercial Zones Council will be restricted in its ability to direct the land use mix for these precincts to the extent it is currently able.

Changes to the industrial zones will allow for some flexibility for uses such as office which has traditionally been heavily restricted in these areas. This new flexibility is considered a positive outcome and should help strengthen the vitality of these precincts, provided councils have the necessary strategic work in place to establish what may be appropriate levels of office activity in the various industrial precincts.

The changes to the zones that now allow limited convenience activities in the Industrial 3 Zone such as Shop and Supermarket are of greater concern. Whilst a wider range of users may be attracted to these areas, the potential to undermine the primary purpose of these industrial precincts through non-industrial activities is increased. Furthermore the vitality of local activity centres can also be impacted as supermarkets and shops locate outside of traditional activity areas in favour of cheaper land in the industrial precincts.

Whilst the new zones are anticipated to offer a range of opportunities and challenges, the full extent of these will only be understood some time in the future once they have been fully developed and implemented.