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## **10.7 Proposed new Planning Scheme Zones - Response and Submission to State Government**

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### **Executive Summary**

#### **Purpose**

This report presents a submission about the State Government proposals for new zones and seeks Council endorsement, so that the submission can be lodged by the 21 September closing date for comment.

#### **Key Issues**

The State Government's proposed new and modified zones cover all of the most commonly used general purpose zones in the Victoria Planning Provisions (the 'tool box' of zones, overlays and other regulations that go into all Victorian Planning Schemes). The changes most relevant to the City of Yarra include:

- (a) the existing Residential 1 Zone would be replaced by one or more of the new Neighbourhood Residential, General Residential or Residential Growth Zone;
- (b) significant changes are proposed to the existing Mixed Use Zone;
- (c) all Business zones would be replaced by two new Commercial zones; and
- (d) the existing industrial zones would be modified with significant changes to allow more office space and some types of retailing.

A report was presented to Council at the meeting 4 September 2012 which recommended:

*That:*

- (a) *Council Officers prepare a draft submission in response to the new zone proposals by the Minister for Planning based on the scope and content of this report; and*
- (b) *Council consider that submission for endorsement at the Council meeting 18 September 2012.*

This report presents that submission (which forms Attachment 1).

#### **Financial Implications**

It is not clear what the financial implications for Council might be because the implementation process is uncertain. It is likely, however, that the implementation process for the Residential and Mixed Use zones would require considerable Council resources and budget commitments for likely expert advices and potential legal services. These costs are likely to be of the order of \$50,000 to 100,000 or more depending on the final public process. This would also mean a significant reprioritisation and change to the Strategic Planning work program. All implications depend on the State Government response to submissions.

#### **PROPOSAL**

That Council endorse the submission in response to the State Government's proposed new zones, included as Attachment 1 to this report so that it can be sent to the Minister for Planning.

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Trim Record Number: D12/68687  
Responsible Officer: Manager City Strategy

### **Purpose**

1. This report presents a submission about the State Government proposals for new zones and seeks Council endorsement, so that the submission can be lodged by the 21 September closing date for comment

### **Background**

2. The State Government released proposals for new residential and commercial zones on 17 July 2012. The changes also modify industrial and other zones. Information on the Department of Planning and Community Development (DPCD) website indicates that the closing date for making comments is 21 September 2012.
3. At the Council meeting 4 September 2012 Council resolved:  
*That:*
  - (a) Council Officers prepare a draft submission in response to the new zone proposals by the Minister for Planning based on the scope and content of this report; and
  - (b) Council consider that submission for endorsement at the Council meeting 18 September 2012.
4. The submission (Attachment 1) is a synthesis of the issues raised in the Council report and additional matters raised at the recent Council meeting or in recent inputs from other organisations such as the Municipal Association of Victoria and resident groups.

### **Consultation**

5. Consultation on the proposed residential zones started with earlier proposals for new zones in 2009. The current public release of the proposed zones closes 21 September 2012. It is not clear whether there will be further consultation about the implementation of the proposals and whether there will be opportunities for public comment on which zones are applied to which areas. It seems likely there will be some scope for public comment on the choice of residential zones but no input of the commercial and industrial zone changes when they are implemented.
6. There has been no previous consultation about the Commercial and Industrial Zone changes. After the current comment period finishes it seems likely there will be no further consultation about how the new zones are applied.
7. Council held two information sessions on the 27 August and has met with resident interest groups about the new zone proposals. Information has been put on the Council web-site outlining the scope of the new zone proposals and encouraging people to consider the proposals. This includes a link to the relevant DPCD web-pages.
8. Council officers have consulted with other Councils about the implications of the proposals. The Inner South Metropolitan Mayors Forum (ISMFM) held a meeting on the new zones (comprising CEO's and senior Planning officers/Managers) on the 27 July to discuss issues and initial responses to the proposed changes
9. Other Councils including Moreland, Darebin and Moonee Valley have shared information about issues raised in those municipalities.

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### **Financial Implications**

10. It is not clear what the financial implications for Council might be because the implementation process is uncertain. It is likely, however, that the implementation process for the Residential and Mixed Use zones would require considerable Council resources and budget commitments for likely expert advice and potential legal services. These costs may be in the order of \$50,000 to \$100,000 or more depending on the final public process.
11. This would also mean a significant reprioritisation and change to the Strategic Planning work program. All implications depend on the State Government response to submissions.

### **Economic Implications**

12. The proposals are likely to have a range of economic implications. The changes are more radical in the Commercial zones, the Mixed Use Zone and on the fringes of these zones (within 100m a number of smaller scale cafes, shops and offices).
13. Council has received expert advice from SGS Economics and Planning (consultants for the Yarra Business and Industrial Land Strategy 2012) on the likely economic implications of the new zones (see Attachment 2). These implications include:
  - (a) a major reduction in Council capacity to manage local employment in industrial / business precincts because residential and retail activities are allowed in a wider range of locations;
  - (b) a shift in retail activity into 'out-of-centre' locations such as other main road frontages and business / industrial precincts which may reduce the viability or cause significant changes in strip shopping centres;
  - (c) reduced capacity to manage or control the activity mix, in and around activity centres meaning that the concept of concentrating activity in these locations close to public transport is diminished;
  - (d) change to the scope for dispersed retailing and for higher density housing in the current Business 2 Zone locations. This could see a growth in overall retail activity and employment;
  - (e) in the commercial and mixed use zone areas, the factors which influence the mix and location of activities would be dominated by market forces and much less by planning and regulation; and
  - (f) the spread of retail activities would be influenced by main road exposure, site size and configuration and economic feasibility which mean that shops and supermarkets would most likely mainly appear in main road locations with good exposure to passing customers.
14. Overall this would create a more dynamic, uncertain and less predictable local economy.

### **Sustainability Implications**

15. The proposals would reduce Council's capacity to manage or regulate a range of activities. At one level this would reduce the scope to concentrate activity close to public transport. It would also generally reduce Council's capacity to manage change to achieve sustainable outcomes.
16. There are some potential positive implications in the Residential zones with some additional scope to set objectives for neighbourhood character and to specify building height but it is not clear to what extent these aspects of the new zones would be discretionary or mandatory.

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17. The generally de-regulatory nature of the Commercial zones would reduce Council's capacity to use policy to implement sustainability objectives in planning decisions. Sustainable local services and employment in business and industrial precincts serving local needs and reducing transport costs as proposed in the BILS would be largely outside Council's control in the new Commercial zones.

### Social Implications

18. The residential zones appear to provide more scope to manage and protect local character but this would depend on how they are applied and administered. The process for implementing these zones would pose significant issues about the future character of inner city residential areas.
19. The Mixed Use and Commercial zones are likely to trigger much greater dynamism and unpredictable change. The City of Yarra is already a very mixed use area. Large parts of the city are close to activity centres / strip shopping centres. The physical and social character of these areas is likely to see more change and with less capacity for Council to intervene through planning scheme provisions, to manage the change or mitigate adverse impacts.

### Human Rights Implications

20. The proposed zoning changes raise some process and engagement issues with implications for human rights. The current proposals are for a direct 'translation' with no public process which would see the Commercial 2 Zone applied to the current Business 3 and Business 4 Zone areas. This would see accommodation including aged care facility, retirement village, backpacker hostel and shared housing in a zone which also allows industry. Generally speaking for a range of amenity and compatibility reasons residential activity should not be located in close proximity to industry.
21. The proposals seem to discriminate between residents of 'dwellings' which are prohibited in the Commercial 2 Zone and all other forms of accommodation which can be permitted.

### Council Plan, Strategy and Policy Implications

22. In the section of the Council Plan 2009-13 about "Making Yarra More Liveable" it states: *"A difficulty identified in the Municipal Strategic Statement (Yarra's strategic plan for land-use) is the balance between the regional (retail and entertainment focus) and local roles of Yarra's Activity Centres. Other challenges for Yarra include how new development integrates with existing communities, the limited land for large developments and high property costs, and the balance between regulatory roles that support growth whilst protecting local amenity."*
23. Initiatives in the Council Plan include streamlining planning applications and implementing structure plans, urban design frameworks and the Open Space Strategy.
24. It would be more difficult to achieve outcomes like implementing structure plans because the new zones provide less scope to regulate where key activities like retailing should or should not go.
25. The Municipal Strategic Statement and other local policies would need to be redrafted / revised to fit with the scope and nature of the new zones.

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### Legal Implications

26. The proposed new zones are part of the Victoria Planning Provisions (VPP) and come under the *Planning and Environment Act 1987*. Council is the Planning Authority for changes to the Yarra Planning Scheme and Responsible Authority for administering the requirements of the current and future zones. Council cannot change or depart from the VPP and must use the zones available.
27. The process of implementing the new residential zones and the modified Mixed Use Zone may involve a public submission and review process including an Advisory Committee appointed by the Minister. Council would need to prepare the relevant strategic justification, maps, zone Schedules and other legal documentation. Given the scale of the task Council may need to support the proposals with expert advice and potentially legal representation.

### Other Issues

28. The proposals are likely to have a number of associated impacts. For example, local policies which apply to land use when a permit is required would no longer have any effect if the activity becomes 'no permit required'. An example of this would be the "Discretionary Uses in the Residential 1 Zone" local policy in the Yarra Planning Scheme that would no longer apply to the activities listed in the new "no permit required" sections of the new Residential zones. This would include Medical Centres up to 250sqm and small shops, cafes and offices within 100m of a Commercial zone or a Mixed Use Zone. Given the extent of the many boundaries of this type this could affect of the order of 10% of Residential zone land.
29. Another issue is that to achieve the objectives of the Business and Industrial Land Strategy (BILS) and protect core business and industrial precincts which are either in a Business 3 Zone (or proposed to be put in that Zone in the BILS), the only zone which seems likely to achieve those objectives is the Industrial 1 Zone. It is not clear whether the 'translation' process proposed by DPCD allows for any alternative zone choices.
30. The submission addresses this issue by recommending that some of the precincts identified in the BILS should be excluded from the direct translation process. The submission also argues that the translation for Commercial and Industrial zones should not be direct but include a process integrated with the other zones.
31. The State Government is working on a new metropolitan policy which is likely to be released in the near future. The proposed new zones may pre-empt metropolitan policy. The proposed zones seem to leave some gaps in the options to achieve future policy. Specifically the two proposed commercial zones both allow a full range of retail activities. It would be difficult to focus retail activity in activity centres and stop 'out-of-centre' retail development.

### Options

32. Council has short, medium term and longer term options for how to respond to the new zone proposals. Council has until 21 September to meet the deadline for comments to the DPCD.
33. How Council and the DPCD communicate to the community and a range of stakeholders with an interest in the future of the local economy, environment and social character of Yarra is also important. The proposals have potentially significant implications for residents, businesses, investors and industry in Yarra.
34. The longer term options depend on how DPCD and the Minister respond to submissions about the new zones and in particular how the process for 'translation' and implementation of the new zones is developed and made more certain.

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### **Conclusion**

35. The proposed new zones pose major issues for Yarra City Council. The new Residential Zones provide some positive opportunities for setting local objectives for local character and building height. The process for translating the zones, however, is not clear. The extent of strategic justification for variable requirements such as building height and lot size permit triggers is also not clear. The scale of the task for translating all the residential and mixed use zones in Yarra would be very large and demand very considerable staff time and other resources.
36. The new Commercial Zones are a radical departure from the current suite of Business Zones. They significantly de-regulate the way these areas would be planned and managed.
37. Council's capacity to develop and implement policy would be significantly reduced if these zones come into effect. The capacity to focus development in activity centres or to protect business and industrial precincts from retail or residential intrusion would also be largely removed. It would be difficult, if not impossible, to effectively apply the recommendations of the recently adopted Business and Industrial Land Strategy 2012.
38. There are likely to be both intended and unintended impacts from these changes. Some of the implications are difficult to predict. It seems likely that if the new zones come into effect the City of Yarra could potentially change in the following ways:
  - (a) there is likely to be more small supermarkets in a wide range of fringe commercial / industrial locations;
  - (b) there is also likely to be more shops, cafes and small offices in residential areas on the fringes of commercial areas;
  - (c) there would be more retail activity outside the existing centres; and
  - (d) nursing homes, hostels, aged care facilities and other types of accommodation could begin to occur in semi-industrial locations.
39. While the implications and impacts are not certain it is clear that Council would, as Planning Authority, have much less capacity to control and respond to how the city develops and changes in the business, industrial and commercial areas. The new zones also mean that particularly in mixed use neighbourhoods which in many ways characterise Yarra, residents, business owners and others with an interest in the future of their city would have much less say or influence over the outcomes.

### **RECOMMENDATION**

1. That Council endorse the attached Submission in Response to the Proposed New Zones (Attachment 1) to the Minister for Planning.
2. That a copy of the Submission be posted on the Council web site.

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### **Attachments**

- 1 Final Draft Submission in Response to the Proposed New Zones
- 2 SGS Economic Analysis Sept 2012