



## Submission from City of Melbourne on Reformed Zones for Victoria

Planning Reform proposed by the Minister for Planning July 2012

September 2012

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## Executive Summary

In July 2012, the Hon. Matthew Guy, Minister for Planning, released a suite of proposed new zones for consultation known as the Reformed Zones for Victoria. The proposed changes are to Residential, Commercial, Rural and Industrial Zones with nine existing zones to be deleted, five zones amended and 12 new zones created.

State government's policy objective is to provide stronger protection for established residential areas, to make zones less restrictive for retail, business and industry and to provide retail uses greater freedom of location.

This submission highlights the main issues for the City of Melbourne and outlines priorities for improvements to proposed reformed planning zones.

The reform proposes to combine height controls with Residential/Mixed Use zones. This approach is generally less flexible than our current approach of using Design and Development Overlays (DDO's) to control built form including height and zones to control land use.

However The proposed Neighbourhood Residential zone would be suitable for application to our existing Residential 1 Zone and Kensington Banks areas - approximately equating to the MSS Stable Areas. Council will need assess the built form in these existing areas to determine a suitable mandatory height control to include in the proposed zone.

The zone reforms include increasing the number as-of-right uses, removing limitations on permit required uses and allowing a broader range of activities to be considered. This could lead to adverse impacts on residential amenity particularly in Mixed Use areas. Before new Mixed Use zones are introduced Council will need to review the options and consult with the community.

The key effects of the zone reforms are:

- increasing the number "as of right" uses;
- removing limitations on permit required uses; and
- allowing a broader range of activities to be considered in all zones.

The consequences for the City of Melbourne of these directions are:

- If there is no permit required Council wont be able to manage the use and development and will lose of ability to assess land use in order to manage amenity impacts and intensity of uses that can impact on amenity (for example food and drink premises in the Mixed Use Zone). A review of the no permit required uses in residential zones is required.
- Council will be unable to determine built form where there permit trigger for a buildings or works for Section 1 uses is removed.
- There will be a loss of the clarity in the management of sensitive uses sited on contaminated land zoned Commercial 1
- There will be potential conflict of land uses with the primary purpose of the zone through the removal of office floor area restrictions in Industrial Zones.

City of Melbourne understands that the new Commercial and Industrial Zones will be directly replaced with the new zones by the Minister for Planning. However, the City seeks the opportunity to consider an alternate zone for the area of land in Jolimont currently located within the Business 5 Zone due to its complex mix of uses and its interface with the adjacent residential uses; and for the Business 2 area on Royal Parade where office development is currently limited.

City of Melbourne also seeks further explanation of the timing for finalising the reformed zones and the process of implementation. This is not very clear from the material provided. Council has been advised that it will have 12 months to consider and apply a conversion of the existing residential zones after the zones are finalised. For the Commercial and Industrial Zones, indications are that after close of submissions, a set of reformed zones will be implemented and local planning schedules will be adjusted to align with the changes where required.

Council recommends the following approach to implementation:

- Part 1 The residential zones remain in the planning scheme until Council understands the role of the existing Design and Development Overlays provisions and the Zone provisions and completes a review to align and transition the current height controls into the appropriate zone; and
- Part 2: The Commercial and Industrial Zones be directly translated into the Melbourne Planning Scheme via a Ministerial amendment with the exception of the land in Jolimont currently zoned Business 5 and the Business 2 area on Royal Parade to provide Council with the opportunity to consider an alternate zones.

## Response to the Proposed Reforms

### Background

In July 2012, the Minister for Planning, released a suite of new residential, commercial and industrial zones for comment. The Reformed Zones for Victoria Discussion Paper Department of Planning and Community Development July 2012 provides a table showing how the zones are changing. The full description of the proposed reform is available at <http://www.dpcd.vic.gov.au/planning/theplanningsystem/improving-the-system/new-zones-for-victoria>. The closing date for making comment is 21 September 2012.

### The Residential Zones

The existing Residential 1 Zone, Residential 2 Zone and Residential 3 Zone are to be replaced by three new residential zones:

- The Residential Growth Zone
- The General Residential Zone
- The Neighbourhood Residential Zone.

Changes are also proposed to the existing Mixed Use Zone, Township Zone and Low Density Residential Zone, to align them with the new residential zones.

Residential zones applicable to the City of Melbourne are the Mixed Use Zone (amended), the new Residential Growth Zone, General Residential Zone and the Neighbourhood Residential Zone. Council's comments are restricted to these zones.

The major features of each zone are as follows.

#### *Mixed Use Zone (amended)*

- *The purposes provide for a mix of uses and housing at higher densities*
- *New as of right uses include- Medical Centre (250m<sup>2</sup>), Office (150m<sup>2</sup>) Shop and all Food and Drink Premises (150m<sup>2</sup>) (no exceptions).*
- *Removes the ability to schedule in floor space restrictions for Office and Shop*
- *A mandatory height limit may be specified for any development. No height limits specified.*

Council has applied the Mixed Use Zone to predominantly residential areas with a managed broad mix of other land uses. Under the new zone Food and Drink Premises (Restaurant, Take away food premises, Tavern and Hotel) would become as-of-right uses whereas currently they are Section 2 (permit required) uses. As such their amenity impacts on surrounding land uses could not be effectively managed.

There is potential for these non-residential uses to have adverse amenity impacts. Council is already experiencing problems managing the conflicts between some of these uses in the Capital City Zone and Docklands Zone. Council requests that Food and Drink Premises be amended to become a Section 2 (Permit required) use consistent with Capital City Zone and Docklands Zone so these uses could be more readily managed.

### ***Residential Growth Zone (new)***

- *The purpose of the zone is to provide medium density housing*
- *Facilitates three storey residential development*
- *A mandatory height limit for residential development may be specified. If not specified a discretionary height limit of 12.5 metres applies.*
- *Certain uses will be as of right in the zone subject to floor space limits. eg shop, office, medical centre and Food and Drink Premises (other than Convenience Restaurant, Hotel and Tavern) within 100m of a Commercial Zone or Mixed Used Zone*

No mention is made of neighbourhood character in the purpose of the zone (as referenced in the range of other residential zones) although it is noted that there is the ability to schedule local objectives. Direction is sought as to whether this is intentional and if so in what circumstances it would be appropriate to apply the zone.

It is noted that non-residential uses such as Take Away Food Premises and Restaurants, Office and Shop are Section 1 no permit required uses. Being Section 1 uses no buildings and works permit is required for uses such as Shop, Office and Medical Centre (subject to locational requirements). These uses have the potential to impact on the expected residential amenity.

In determining which residential zone fits best with the existing residential zones and having regard to expected levels of amenity, Council would not select a zone that permits these uses as-of-right.

Section 2 (permit required) non-residential uses are not restricted by the building heights specified in the zone. Consequently there will be no guidance of appropriate building heights except in the general decision guidelines or if there is a Design and Development Overlay (DDO) over the area. No explanation is provided as to why it is necessary to define a building height for residential buildings and not for non-residential buildings. Height should be based on a preferred character and built form outcome for an area, not on land use.

### ***General Residential Zone (new)***

- *Neighbourhood character is a key aspect of the purposes of the zone and the requirements*
- *A mandatory height limit for residential development may be specified. If not specified a discretionary height limit of 9 metres for residential development applies.*
- *Certain uses are as of right in the zone subject to floor space limits. e.g. shop, office, medical centre and food and drink premises (other than convenience restaurant, hotel and tavern). Location requirements apply to office and food and drink premises.*

Consistent with the comments regarding the Residential Growth Zone, non residential uses such as Take Away Food Premises and Restaurants, Office and Shop are a Section 1 (no permit required) use. As such they have the potential to impact on the expected residential amenity.

In determining which residential zone fits best with the existing residential zones Council would not select a zone that permits these uses as-of-right because it sets up potential amenity conflicts.

The listing of some uses in similar zones is inconsistent. A Tavern is specifically listed in Section 2 (permit required) of the General Residential Zone, but is not listed at all in the Neighbourhood Residential Zone, or the Mixed Use Zone.(by default it simply falls into Section 2).

Section 2 (permit required) non-residential uses are not restricted by the building heights specified in the zone. Consequently there will be no guidance of appropriate building heights except in the general decision guidelines or if there is a Design and Development Overlay (DDO) over the area. No explanation is provided as to why it is necessary to define a building height for residential buildings and not for non-residential buildings. Height should be based on a preferred character and built form outcome for an area, not on land use

Height should be based on a preferred character and built form outcome for an area. This is not related to land use.

### ***The Neighbourhood Residential Zone (new)***

- *Neighbourhood character is a key aspect of the purposes of the zone and the controls that apply.*
- *Minimal change is a key aspect of the Neighbourhood Residential Zone*
- *A mandatory height limit for residential development may be specified. If not specified a mandatory height limit of 9 metres for residential development applies.*
- *Allows the number of dwellings on a lot to be limited (the minimum cannot be less than two dwellings)*
- *Certain uses such as place of worship, bed and breakfast and medical centre are as of right in the zone but subject to floor space limits.*

This proposed zone would be suitable for application to our existing Residential 1 Zone and Kensington Banks areas – approximately equating to the MSS Stable Areas. The proposed zone is similar to the existing Residential 1 zone but includes medical centre up to 250m<sup>2</sup> as an as-of-right use and introduces a maximum height control into the zone of 9m or other specified.

Council will need assess the built form in these existing Residential 1 zone and Kensington Banks areas to determine a suitable maximum height control to include in the proposed zone.

### ***General comments on the residential zones***

This proposed Neighbourhood Residential zone would be suitable for application to our existing Residential 1 Zone and Kensington Banks areas - approximately equating to the MSS Stable Areas. Council will need assess the built form in these existing Residential 1 zone and Kensington Banks areas to determine a suitable mandatory height control to include in the proposed zone.

The Melbourne Planning Scheme has a comprehensive suite of built form controls (including height controls) which detail the outcomes sought and can guide decisions on an extensive range of built form issues. The DDOs, which manage built form in the City of Melbourne, are tailored to the local context. Land in a particular zone could be subject to a range of different DDOs.

A key issue for City of Melbourne is the removal of limitations on permit-required uses and allowing a broader range of activities to be considered 'as of right' in all zones but this is particularly so for non residential uses in mixed use areas. The loss of a trigger requiring a permit means a loss of ability to assess developments for potential adverse amenity impacts, intensity and built form. For example, managing noise associated with licensed premises.

In the residential zones the current Clause 56 provisions are contrary to cutting red tape and other Government planning initiatives. The proposed subdivision provisions continue to focus on greenfield subdivision and overlook the process of building subdivisions in already developed areas. When a development has already been fully assessed against Clause 55, then assessing it again against Clause 56 is a needless duplication which is costly and time consuming for applicants and Councils.

DPCD can rectify this by exempting those subdivisions in the residential zones that align with already approved developments from all of the requirements of the Clause. The following word change is requested *"An application to subdivide land aligning with a development for which a permit has been granted, does not need to meet the requirements of Clause 56"*.

#### ***Summary of the suggested changes to the proposed residential zones***

1. Food and Drink Premises should be amended to become a Section 2 (Permit required) use in the new Mixed Use Zone.
2. Base Height controls on the preferred character and built form outcome for an area and not on land use.
3. Amend the permit requirement to subdivide land by inserting the following wording : An application to subdivide land, other than an application to subdivide land into lots each containing an existing dwelling or car parking spaces ***or an application which aligns with a development for which a permit has been granted***, does not need to meet the requirements of Clause 56".
4. The residential zones should remain in the planning scheme until Council has assessed the role of the provisions of the existing Design and Development Overlays and Zones and determined how to align and transition the current height controls into the appropriate zone.



## Commercial Zones

The reform aims to ensure that the new commercial zones respond to changing retail, commercial and housing markets. It does this by allowing for a wider range of uses that will support more mixed-use employment. There will no longer be office-only zones. The proposed commercial zones give greater flexibility for the market to choose land use. This is consistent with the approach to land use planning in the City of Melbourne.

DPCD proposes consolidating the five existing business zones into the following two commercial zones:

### *Commercial 1 Zone (new zone)*

*The purpose of this proposed zone is to be a mixed use commercial zone with high density residential uses.*

*This zone combines the existing Business 1 Zone (for retail strip centres), Business 2 Zone (primarily offices) and Business 5 Zone (office and residential). It removes the distinction between business zones by expanding the allowed range of land use activities without the need for a planning permit. These include accommodation for which currently a permit is required in the Business 1 Zone and retail uses for which currently a permit is required in the Business 2 Zone. It also removes the possibility of scheduling in floor area restrictions for offices.*

With the removal of the ability to schedule in office floor area restrictions, there is no means of carrying forward the current floor area restrictions in the Business 2 zone which specifies a maximum leasable floor area for Royal Parade Parkville. Council seeks direction on this issue given that the limitation is no longer provided for in the proposed zone.

The implementation of the Commercial 1 Zone over the land in Jolimont currently zoned Business 5 will require special consideration by Council who may need to consider an alternate zone for this area due to the mix of uses in the locality and the impact of the removal of permit requirements for retail premises.

An issue worthy of discussion is the proposed changes from the perspective of City of Melbourne's obligations with respect to the use of the Environmental Audit Overlay.

The Commercial 1 Zone changes a number of sensitive land uses such as Accommodation and Child care centre from Section 2 (permit required) to Section 1 (no permit required). In the absence of a requirement for a planning permit the Responsible Authority has no legislative jurisdiction to require an Audit or Environmental Assessment.

For example a building within the current Business 2 Zone, and historically used for potentially contaminating purposes, can be used for a sensitive use in the proposed Commercial 1 Zone without any consideration being given to potential contamination of that land. In this type of situation direction is needed on how to meet the Planning Authorities obligations under Ministerial Direction Number 1.

### ***Commercial 2 Zone (new zone)***

*This zone proposes to combine the existing Business 3 Zone (office and industry) and Business 4 Zone (none in City of Melbourne). This zone seeks to develop commercial areas for offices, appropriate manufacturing and industrial uses that do not affect the safety and amenity of adjacent sensitive uses.*

*The proposed zone removes the permit requirement for cinema, cinema-based entertainment facility, food and drink premises, and restricted retail premises and removes the maximum floor area restriction for an office. Requirements in the zone also make Accommodation (other than dwellings that will continue to be a prohibited use) a permit required use and exempts small-scale supermarkets and associated shops from a permit requirement. Larger supermarkets and stand-alone shops require a permit.*

This zone will only apply to the existing Business 3 Zone. The Commercial 2 Zone will be able to be introduced in the City of Melbourne with no significant issues.

### ***Summary of the main issues***

The Commercial and Industrial Zones can be directly translated into the Melbourne Planning Scheme via a Ministerial amendment with the exception of the land in Jolimont currently zoned Business 5 and the Business 2 area on Royal Parade where Council will need to consider alternative zones.

A building currently located within the Business 2 Zone, and historically used for potentially contaminating purposes, can be used for a sensitive use in the proposed Commercial 1 Zone without any consideration being given to contamination of that land. In this type of situation direction is needed on how to meet the Planning Authorities obligations under Ministerial Direction Number 1.

## **Industrial Zones**

The aim of these proposed zones is to support business investment and industry by responding to new and emerging trends for mixing industry and office, and to provide greater incentive for business investment. The reforms amend the existing Industrial 1, Industrial 2 and Industrial 3 Zones. There is no Industrial 2 zoned land in the City of Melbourne.

The industrial zones have been amended in the following manner:

### ***Industrial 1 Zone (amended)***

- *The 500 square metre floor space limit for office has been removed. Councils will retain the ability to schedule in a floor space requirement.*

### ***Industrial 2 Zone (amended)***

- *The 500 square metre floor space limit for office has been removed. Councils will retain the ability to schedule in a floor space requirement.*

### ***Industrial 3 Zone (amended)***

- *Purpose of the zone to be a buffer between the Industrial 1 Zone and the industrial 2 Zone and local communities.*
- *The 500 square metre floor space limit for office has been removed. Councils will retain the ability to schedule in a floor space requirement.*
- *Exempts a small scale supermarket from a permit requirement if the floor area does not exceed 2,000 square metres. If these conditions are not met the use is prohibited.*
- *Exempts a shop from a permit requirement if the floor area does not exceed 500 square metres and is on the same land as the supermarket. If these conditions are not met the use is prohibited.*

The removal of a maximum floor area restriction for office in all 3 industrial zones will enable an increased number of offices over 500 square metres to establish in industrial zoned areas (unless office floor space limits are scheduled in). Council's industrial policy in the Municipal Strategic Statement for the Fishermans Bend core industrial area is for its to be "the preferred location for clean advanced manufacturing, research and development and ancillary uses". The MSS also includes a strategy to limit the development of commercial and retail uses in the Fishermans Bend industrial area which are not ancillary to the industrial use.

Although there is the ability to schedule an office floor space limit, there is no indication as to what work Council will be required to undertake to justify a maximum office floor area. Direction is sought on this matter.

### ***Summary of the main issues***

Clear guidance required as to what work Council will be required to undertake to justify a maximum office floor area.

**Appendix 1 - Reformed Zones for Victoria Discussion Paper  
Department of Planning and Community Development July  
2012**