

*Planning and Environment Act 1987*

# **REPORT ON NEW RESIDENTIAL ZONES FOR VICTORIA**

Report of the Advisory Committee  
Pursuant to Section 151 of the Act

Advisory Committee:

Kathryn Mitchell, Chair

Megan Carew

John Keaney

Michael Kirsch

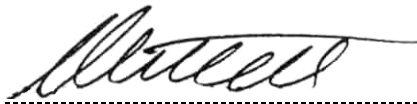
Chris McNeill

Lester Townsend

**21 AUGUST 2009**

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## REPORT OF THE ADVISORY COMMITTEE PURSUANT TO SECTION 151 OF THE ACT



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Kathryn Mitchell, Chair



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Chris McNeill, Member



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Lester Townsend, Member

**21 August 2009**

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## Part 1: Introduction

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This report has five parts:

- **Part 1:** Introduction and executive summary (provides an overview of the key issues discussed in the report).
- **Part 2:** Background of the review of residential zones, a summary of submissions and the appointment of the Advisory Committee.
- **Part 3:** Conceptual and strategic issues with the zones.
- **Part 4:** Implementation issues.
- **Part 5:** Conclusions and Recommendations.

Five appendices are included:

- **Appendix A:** Terms of Reference.
- **Appendix B:** Submitters and parties.
- **Appendix C:** Detailed discussion on technical and wording issues.
- **Appendix D:** Revised set of the zones, amended to reflect the Advisory Committee's recommendations.

In the report, a reference to a submitter is followed by the Submission Number (for example, greater Bendigo (42))

For ease of understanding, the Advisory Committee has retained reference in the report in all cases to the names of the three exhibited zones (Substantial Change, Incremental Change and Limited Change) despite ultimately recommending a modification to these names.

## 1. Executive summary

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Three new residential zones are proposed to be introduced into the Victoria Planning Provisions being:

- **Substantial Change Zone** – To deliver housing at higher densities in locations that offer good access to services and transport including activity centres and strategic redevelopment sites.
- **Incremental Change Zone** – To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households, and to encourage residential development that respects the neighbourhood character.
- **Limited Change Zone** – To ensure residential development protects the neighbourhood character of the area.

In the introduction to the Consultation Draft on the proposed new zones, the Minister for Planning stated:

*Victoria is experiencing unprecedented population growth and we have an ageing population. Changing lifestyles and demographics mean that there is, and there will continue to be, significant demand for more housing and different types of housing to meet our future generations' needs.*

*Planning plays an important role in making sure our residential areas can accommodate our future housing requirements. It also plays a significant role in protecting valued elements of the character of our neighbourhoods – our heritage, trees, and streetscapes. Housing affordability is also influenced by planning – by enabling new housing opportunities to meet housing demand; and by locating housing close to jobs, shops, transport and services.*

*With effective tools, the planning system can deliver all of these things.*

The Advisory Committee appointed by the Minister for Planning to review the three new zones has considered them in the context of the above advice.

The zones were exhibited in early 2009 and 236 submissions were received.

## 1.1 Strategic Issues

### Context of the new zones

While there was general support for the introduction of the new zones, it was submitted by some that the new zones had been prepared in a strategic vacuum and bore little relationship to other work being done at the state level such as *Melbourne 2030*; *Melbourne @ 5 Million*; the Urban Growth boundary review; Activity Centres; and the Housing Growth Requirements.

The Advisory Committee notes that the new residential zones are not the only implementation tool of the State Government's housing and planning strategies arising from *Melbourne 2030*. The new zones are one component of a suite of provisions; they are important tools to cater for (and to control) conventional and higher density development in the residential areas of Melbourne and across the state.

The new zones must be seen in the context of a wider housing implementation package that consists of:

- Significant increases in housing densities in activity centres.
- Significant increases in housing densities on strategic redevelopment sites.
- Significant increases in urban renewal areas in much of inner Melbourne.
- More modest density increases in established arterial road strips where increased residential densities are encouraged with existing business activity.

Few of these examples have been implemented by a residential zone but have utilised other planning tools such as the Mixed Use Zone, the Priority Development Zone and the Comprehensive Development Zone. The Advisory Committee also expects that the yet to be released Activity Centre Zone may also play a significant role in accommodating residential growth.

Much of the expected 316,000 dwellings in the established parts of Melbourne over the next twenty years can be anticipated in areas such as these. This means that while the 'conventional' areas to which the three new zones apply will be a contributor, they will by no means be the sole (or even the main) contributor.

The Advisory Committee concludes that the new zones are only one of the tools that form part of the total response to the housing demands for Melbourne. The Advisory Committee also notes that while the zones do not address some broader housing policy issues, (affordability and ESD issues in



particular), these issues apply to all zones and would be addressed at a higher level in either the SPPF or LPPF.

### **The role of the new zones**

It was submitted that the new zones were little different to the existing suite of zones and in some cases represented a backward step.

The Advisory Committee acknowledges that a common criticism of the existing zones is that they are not a 'neat fit' with state and local planning policies. *Making Local Policy Stronger* repeatedly spoke of the mismatch between the policy framework and the implementation package of zones and overlays.

The Advisory Committee (and many submitters) believes that the new zones have the potential to be a significant improvement on the former regime as, (among other things) they contain explicit zone names and purposes which better express the policy basis of their application.

### **The three categories of zones**

While there is debate about how to identify 'high growth', 'medium growth' and 'low growth' areas, and how the amount of development in these areas might need to vary from location to location, the Advisory Committee acknowledges that the general approach of identifying 'high', 'medium' and 'low' growth areas is now well established in Victoria. It is established in many schemes; it is already a common feature of housing strategies; it is now also a common feature of precinct structure plans where 'higher density' residential areas are often identified; and it was a key recommendation of the *Melbourne 2030 Audit Report*.

The Advisory Committee believes that the general approach of identifying 'go go', 'go slow' and 'no go' areas has to be taken as the accepted approach to managing residential development in Victoria.

### **Differences between the existing and proposed zones**

It is apparent to the Advisory Committee that there are several key differences between the existing zones and the proposed zones such as:

- More explicit zone names.
- More explicit zone purposes.
- The application of mandatory height controls.
- The re-introduction of 'density' as a tool.
- The introduction of lot size.
- Notice and appeal provisions that can be 'turned' on or off.

- A slightly modified Table of uses.
- Ability to schedule modifications.
- Ability to tailor schedules on a micro, rather than macro scale.
- The potential to replace existing overlays and absorb them into the schedules to the new zones.
- The ability to articulate neighbourhood character objectives and preferences in the schedules to the new zones.

While not all of these changes are supported by the Advisory Committee, it does believe that the new zones serve an important role in providing a more seamless and transparent transition from *policy* to *control* than the existing zones do; and they better articulate to the community at large the different role of the residential zones.

One of the keys to entrenching this distinction between the old and the new lies in the consideration of the 'purposes' of the zone.

The Advisory Committee concludes that the new zones are a more transparent reflection of the policy framework in many planning schemes subject to the inclusion of very clear zone 'purposes'.

### **Zone purposes**

The Advisory Committee believes that the zone purposes must provide a clear statement of the use and development expectations within the area they are applied.

While the Advisory Committee believes that the purposes of the new residential zones are an improvement on the current zones, it considers that further improvements should be made. The suggested improvements of the Advisory Committee can all be sourced from the 'Consultation Draft' which it considers articulates a simple message for the three zones that has not always found its way into the exhibited purposes. In particular, the Advisory Committee considers that the following important and quite clear messages emerge from the Consultation Draft:

#### Substantial Change Zone:

*This zone will provide the opportunity to accommodate people in medium to higher density housing development (page 17)*

#### Incremental Change Zone:

*... will allow medium density housing that respects the character of the neighbourhood. (page 27).*

### Limited Change Zone:

*... identifies neighbourhoods where there is limited opportunity for change. ... opportunities to provide additional housing are limited by the specific characteristics of an area (page 37).*

The Advisory Committee concludes that there is a need to articulate more explicit and simple messages about the purposes of the three zones.

### **The application of the zones**

The Advisory Committee concurs with submitters that the new *Incremental Change Zone* will replace the Residential 1 Zone as the 'default' zone. The zone will provide for flexibility in growth and facilitate diverse housing outcomes that respect character.

The Advisory Committee considers that the main role of the new *Substantial Change Zone* will be to identify a greater number of areas where higher density development is encouraged. If the Substantial Change Zone is to apply more widely than the current Residential 2 Zone, it will need to apply where Councils have identified areas suitable for higher density housing in local policy. Establishing greater flexibility in the Substantial Change Zone will greatly assist those regional councils for whom 'substantial' change might be the difference between one and two storey development. Allowing a regional council to use the zoning system to distinguish between even conventional and medium density housing, will be a more transparent outcome than the present zones.

The Advisory Committee considers that the new *Limited Change Zone* would be applied to areas where specific characteristics have been identified that limit the opportunity for change.

### **Are the zones policy or just a tool?**

The Advisory Committee believes that the new residential zones are a tool to implement policy; they are not policy in themselves. As such they are capable of expressing a range of policy outcomes. The Advisory Committee has concluded that a feature of the new zones will be a more transparent and easily understood policy and control framework.

### **Third party appeal rights**

A common criticism of the existing Residential 2 Zone, and a repeated concern throughout the earlier consultation on the zones in 2008 related to the removal of third party rights for certain forms of development. As exhibited, the three zones enable a Council to either 'turn on' or 'turn off' this

exemption. The Advisory Committee supports the view of most submitters that this option is supported and that all three zones should have this degree of flexibility.

## **1.2 Statutory Issues**

### **Tables of uses**

A number of modifications to the Tables of uses were suggested by submitters, including making some uses either discretionary or prohibited. The Advisory Committee has analysed these requests but has recommended very few substantive changes.

Submitters also queried whether there is a need to include in the Tables of uses activities (such as mining etc) that are unlikely to occur within a residential area. It is acknowledged that all three new zones comply with the Ministerial Direction on the form and content of Planning Schemes by including uses in either Section 1 or Section 2 such as Apiculture; Carnival; Circus; Informal outdoor recreation; Mineral exploration; Mining; Minor utility installation; Natural systems; Railway; Road; Search for stone; and Tramway.

The Advisory Committee considers that the introduction of the new zones provides an ideal opportunity to rationalise the above uses into a standard clause (in the Particular Provisions) rather than to clutter up the zones with long lists of unnecessary or unlikely uses.

The Advisory Committee therefore recommends that a new clause be developed in the Particular Provisions which lists the uses (with conditions) that are standard for all the residential zones.

### **The Role of Overlays**

There was widespread confusion among submitters (especially Councils) as to the extent to which the zones could (or should) replace existing overlays. In this context, the Advisory Committee trialled a 'policy neutral' conversion of a number of existing overlays into the schedules to the zones.

This exercise brought to light a number of potential problems including the inability of the new zones to trigger a 'development' permit in all cases. This represents a significant change from the existing control regime. The exercise also illustrated that the complexity of some existing overlay controls simply do not enable a 'neat' conversion.

On top of these practical problems, the Advisory Committee believes that there may be a logistical issue for the VPP planning system which actively

encouraged Councils to prepare zone and overlay regimes which have been introduced into the planning system and accepted by the development and wider community.

The Advisory Committee believes that the existing overlay regime should be left in place. Leaving the overlay regime untouched will also greatly assist the smooth introduction of the new zones whereby the overlay regime will remain untouched and only the zones need to be changed.

None of this means to say that in the future a Council would not be able to use just a zone (and its schedule) rather than a zone and an overlay. It is more a reflection on the fact that after a decade of developing a control regime based around the zone controlling the **use**, and the overlay influencing the **development**, there is now a vast body of approved work which is well understood and which should not be dismantled.

The Advisory Committee concludes that changes to the existing overlay regime should be avoided as it is not possible for the zone schedules to replace all of the relevant overlay objectives, details and development triggers.

### **Neighbourhood Character**

The Advisory Committee dealt with many submissions that questioned whether 'neighbourhood character' should remain as a consideration especially in the one zone that anticipates significant change.

All three zones contain purposes such as:

*To manage residential development to achieve neighbourhood character and design objectives specified in a schedule to this zone.*

The Schedules to the zones enable the neighbourhood character and design objectives for an area to be expressed. The Advisory Committee supports the reference to neighbourhood character in the Incremental Change Zone and the Limited Change Zone.

However, the Advisory Committee notes that the Substantial Change Zone is intended to host the most significant redevelopment of the three zones and inevitably, that change will be different to the existing built form and settlement pattern that presently exists.

The Advisory Committee supports having design objectives and built form outcomes in the Substantial Change Zone but believes that this is a different issue to having neighbourhood character objectives in the zone. The Advisory Committee considers that in the one new zone where new development is actively encouraged, a reference back to neighbourhood

character will inevitably anchor the assessment to *'what is there now'* rather than to *'what should be there'*.

The Advisory Committee supports clear design objectives and built form outcomes in preference to a reliance on the concept of 'character' in the new zone where that 'character' is likely to change and where a new character is to be created. It concludes that there should be no reference to neighbourhood character in the Substantial Change zone but there should be a clear reference to design objectives and built form outcomes.

### **Guidance for non-residential uses**

Only the Limited Change Zone provides any direction for the consideration of 'use' applications and the Advisory Committee considers this needs to be extended to all three zones. The Advisory Committee notes that the new (as well as the existing) suite of residential zones allow many 'non-residential' uses, subject to a permit. The new zones provide no guidance on how these applications should be assessed. All three exhibited residential zones contain the following purpose:

*In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.*

This purpose is reflected in the Table of uses where non-residential uses such as Car wash; Community market; Convenience restaurant; Convenience shop; Food and drink premises; Medical centre; Place of assembly; Place of worship; Plant nursery; and Service station require a planning permit.

In the absence of any guidance from the zone, many councils have prepared a local policy at Clause 22 of their schemes which address 'Non-residential uses in the residential zone'. There is considerable repetition in these policies which typically contain objectives addressing threshold issues including appearance, hours of operation, location, amenity impacts, siting, and car parking.

Some policies contain detailed provisions relating to various uses such as medical centres, child care facilities, petrol stations and places of worship. Other policies contain detailed application requirements, decision guidelines and reference documents.

The Advisory Committee believes that this recurrent local policy across the state could easily be absorbed into the Particular Provisions at Clause 52, which would rationalise the plethora of existing policies and help reduce repetition as well as the bulk of local policy.

The Advisory Committee concludes that a new Clause should be developed in the Particular Provisions at Clause 52 to address 'Non-residential uses in the residential zones' and that the Table of uses in the new zones contain a cross reference to it.

### **Density and Minimum Lot Size**

A number of submitters queried the basis for the introduction of density controls and minimum lot sizes into the Limited Change Zone. The Schedule to the Limited Change Zone specifies the maximum number of dwellings that can be constructed on one lot. This schedule also enables a Council to specify a minimum area for subdivision.

For such a significant change, the Advisory Committee would ordinarily apply the same principles that it applies to any amendment, which is to source the strategic justification for the change. This is a fundamental aspect of the Strategic Assessment Guidelines. The Advisory Committee was not able to source the origins of these changes from any of the material accompanying the new residential zones, and can therefore find no basis for the changes. That said, and in the context of its earlier remarks about the retention of existing overlays, it remains open to Councils to propose a density requirement or minimum lot size and, if substantiated, to use one of the existing overlays.

The Advisory Committee concludes that there is no strategic basis for the introduction of default 'density' or 'minimum lot size' provisions in the Limited Change Zone.

### **Height**

Of all of the issues before the Advisory Committee, the question of height has been one of the most contentious. The two issues associated with the debate on 'height' relate to the identification of an actual height limit; and the proposed introduction of mandatory height controls.

In all three zones, there is a provision which specifies that the height of a building must not exceed a building height specified in a schedule to the zone. In general terms those heights are 9 metres (3 storeys) in the Limited Change and Incremental Change Zones; and 13.5 metres (4 storeys) in the Substantial Change Zone.

The Advisory Committee supports, in principle, the identification of a height limit as it provides clear guidance to Council, the community and developers. It considers that to avoid confusion, the identified height need only be expressed in metres and not storeys.

The Advisory Committee however, does not support the introduction of mandatory height controls as the default position in all zones. It is aware of a number of previous Panel reports which have consistently established the principle that the appropriate (or preferred) means of expressing requirements in planning schemes is as a 'discretionary' provision, with 'mandatory' requirements being applied only in exceptional circumstances.

The Advisory Committee believes that the 'default' position in the Victorian planning system is for discretionary controls unless there are very persuasive reasons to mandate an outcome. On the basis of the consultation draft and submissions, the Advisory Committee has struggled to find a basis for such a mandate other than where one already exists in the scheme – such as in the current Residential 3 Zone which specifies a mandatory 9 metre outcome (which has been translated into the Limited Change Zone). The advisory Committee therefore only supports the ability to 'schedule-in' a mandatory height control in the Limited Change Zone.

In order to ensure that the new zones can be widely applied, the Advisory Committee has recommended that each zone provide a default height control for dwellings and residential buildings (as per the existing Residential 3 Zone) which can be exceeded with a planning permit. The schedule to each zone may specify an alternative discretionary height limit. In the Limited Change Zone there is an option for a mandatory height control to be included within the schedule, where this can be strategically justified. Transitional provisions will be required to facilitate implementation.

## **1.3 Implementation Issues**

### **Translation**

Almost without exception, Councils expressed reservations about the translation from the old zones to the new; and raised issues of resources, timeliness, equity and accuracy of conversion (among others). These concerns were supported by others.

The Advisory Committee understands that the implementation of the new residential zones will be in stark contrast to the implementation of the new rural zones which were 'rolled-out' over a number of years. DPCD advised that ideally there will be a 'Day 1' type translation with the Incremental Change Zone replacing the existing Residential 1 Zone as the clear 'default' zone.

Only those councils which had already done the required level of strategic research (or those Councils which already have provisions in their scheme) would be able to apply either the Substantial Change Zone or the Limited



Change Zone on 'Day 1'. For those councils with a clear 'policy' base to accompany their zones, there is the prospect that these areas might also be able to be part of a 'Day 1' translation. Other Councils without that level of statutory or policy precision will inherit the Incremental Change Zone on 'Day 1' and will only be able to apply the other new zones based on further strategic work.

### **Further Strategic Work and Zone Rollout**

The Advisory Committee considers that introducing the new zones ahead of revised policy arising from further strategic work is the best way to proceed. This will allow any revised policy to be shaped in the full knowledge of the tools that can be used to implement it. In the past, uncertainty about, or lack of focus on, implementation methods has made a number of planning strategies difficult to implement. If the new zones are in place, the objectives and strategies of any future housing policy or design analysis can focus on some very clear questions, such as where the Substantial Change Zone should be applied and how its schedule should be configured, and where the application of the Limited Change Zone is justified.

## **1.4 Conclusion**

The new residential zones have much to offer by way of a more transparent planning system, but these benefits will only be achieved if the zones are applied in a timely fashion and broadly across residential areas.

As exhibited, the details of the new zones make it unlikely that these benefits will be achieved in all cases and the Advisory Committee therefore believes that changes need to be made to the zones. These changes are not the result of a change in basic philosophy, but a careful analysis of the practical issues reported to it during its consultations.

The Advisory Committee believes that by making a number of small changes to the zones and schedules, and adopting a pragmatic approach to introduction, it should be possible to apply the zones widely as part of their initial introduction, reduce the need for strategic work as part of their introduction, and provide a clear framework for the ongoing refinement of housing strategies.

The content of the zones cannot be treated in isolation from the very real issues of their introduction and the translation within existing schemes.

**The Advisory Committee commends the introduction of the proposed new residential zones to the Minister for Planning, and recommends they be adopted in accordance with Appendix D (including amended zone names, purposes and provisions).**

## **Part 2: Background**

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This section sets out the appointment of the Advisory Committee and the Terms of Reference from which it is taking its reference, the detail of the proposed zones, the general content and summary of submissions, and the policy initiatives and context that have led to the development of the zones.

## 2. The Advisory Committee

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### 2.1 Purpose of this report

The *Making Local Policy Stronger* (2007) report includes Action 1:

*Revise the zones, overlays and particular provisions to provide more opportunity to express state and local policy outcomes. As a priority, review the residential zones and associated provisions.*

This report presents the review of the residential zones. It responds to issues raised in the consultation carried out by the Department of Planning and Community Development (DPCD) from February 2009 to April 2009 and the hearing process of the Advisory Committee.

Three new residential zones are proposed (emphasis added):

- **Substantial Change Zone** – To deliver housing at higher densities in locations that offer good access to services and transport including activity centres and strategic redevelopment sites.
- **Incremental Change Zone** – To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households, and to encourage residential development that respects the neighbourhood character.
- **Limited Change Zone** – To ensure residential development protects the neighbourhood character of the area.

### 2.2 Appointment of the Advisory Committee

An Advisory Committee to review and consider the new zones was appointed by the Minister for Planning on 31 March 2009, pursuant to Part 7 of the *Planning and Environment Act 1987* and comprises:

- Kathryn Mitchell, Chair
- Megan Carew
- John Keaney
- Michael Kirsch
- Chris McNeill
- Lester Townsend

The Advisory Committee was assisted by Jenny Dzomba, Senior Project Officer from Planning Panels Victoria, and it acknowledges her major contribution in all aspects of its work.

### **Terms of Reference**

The Minister provided the Advisory Committee with Terms of Reference to guide the context of its work (Appendix A). The Terms of Reference note the purpose of the Advisory Committee is the review of draft new residential zones to replace the existing Residential 1, 2 and 3 Zones and to make recommendations on:

- a) *Form, content and operation of the new zones and accompanying schedules.*
- b) *Implementation of the new zones.*

Further, the Task noted in the Terms of Reference requires the Advisory Committee to:

- a) *Consider all submissions to the draft zone provisions;*
- b) *Hold public hearings of submitters to consider and clarify issues raised in the written submissions, if required; and*
- c) *Make recommendations on the final form, content and operation of the draft zone provisions.*

The Advisory Committee's Terms of Reference establish a two stage process for the review:

- Stage 1: Review of submissions and conduct of public hearings by the Advisory Committee to give submitters to the February 2009 draft zone proposals the opportunity to present the issues raised in their written submissions.*
- Stage 2: Preparation of a final report recommending proposed new residential zones suitable for inclusion in all Victorian planning schemes.*

The Terms of Reference requires the Advisory Committee to present a final report to the Minister for Planning by 21 August 2009 that:

- a) *Provides a summary of the issues raised by the submissions.*
- b) *Recommends the appropriate form and content for the new zones.*
- c) *Identifies any consequential changes to other provisions of the Victoria Planning Provisions that may be required as a result of the recommended residential zones.*

- d) *Identifies any specific matters that should be considered for the introduction of the new zones.*

### **Submissions and Hearings**

The DPCD invited submissions on the draft zones, with the exhibition period closing on 9 April 2009. Due to the recent Victorian bushfires, council resources in municipalities affected by bushfire have been concentrated on dealing with bushfire recovery and reconstruction. As a result, submissions from councils in fire affected municipalities were granted an extension of time to the end of April 2009.

Submissions were received by the DPCD by e-mail, via an on-line lodgement system and in hard copy by mail and 235 submissions were lodged. Submissions were received from a range of stakeholders, including councils, community groups, peak industry bodies and private individuals. The majority of submissions were from metropolitan Melbourne, with rural issues predominantly being addressed through rural council, planning consultant and some peak industry body submissions.

The submissions were referred to the Advisory Committee on 24 April 2009.

All submissions received were published on the DPCD website, except for one submission where confidentiality was requested. Four other submitters requested that their personal details not be published. The list of submitters and those who attended the hearings is provided in Appendix B.

Submitters were invited to expand on their submission and make a presentation to the Advisory Committee. Over 60 submitters were heard by the Advisory Committee. Hearings were conducted in Melbourne and in regional Victoria during June 2009.

The Terms of Reference specified that a quorum was not required for the Advisory Committee to conduct public hearings, and the Advisory Committee sat with two members for most hearings.

The Advisory Committee acknowledges all submitters, irrespective of whether they appeared at the hearings, and records its appreciation for the manner in which they were prepared and the high level of rigour in the arguments put forward in relation to the proposed zones. There is no doubt that the submissions have contributed greatly to the improved end product.

## **Agency Consultation**

In addition to the hearing process, the Advisory Committee also undertook consultation sessions with representatives from various Government agencies. Those consulted included:

- DPCD – Regional Planning Managers;
- DPCD – Statutory Planning Systems Reform;
- Growth Areas Authority (GAA);
- Planning Panels Victoria (PPV);
- Priority Development Panel (PDP); and
- Victorian Civil and Administrative Tribunal (VCAT).

## 3. The proposed zones

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### 3.1 New Residential Zones for Victoria

In February 2008, the Government released a discussion paper to help inform the development of the new residential zones. One of the driving principles for the new zones set out in the paper was that they were to more directly reflect the objectives of state and local planning policies for housing, and provide better tools for councils to manage the diverse and changing housing needs of their communities.

The paper put forward a zone structure to substitute the existing Residential 1, 2 and 3 Zones with new zones based on areas where substantial, incremental and limited housing change could occur. The suggested framework also included the capacity to introduce multiple schedules for each of the new zones to address housing issues on a precinct by precinct basis, together with scope for reduced notice requirements and varied building height provisions and local *ResCode* standards.

Over 400 submissions were received in response to the discussion paper. Feedback on the discussion paper informed the preparation of the detailed draft residential zones.

A consultation paper *New Residential Zones for Victoria – Consultation Draft* (February 2009) was then released for further public consultation between February 2009 and April 2009. The Consultation Draft described the zones in full detail and provided explanatory information to help stakeholders understand the important features of the new zones and the manner in which they would operate.

The proposed zones are:

- Substantial Change Zone;
- Incremental Change Zone; and
- Limited Change Zone.

### 3.2 What will the new zones achieve?

The Advisory Committee (and many submitters) believes that the new zones have the potential to be a significant improvement on the former regime as, (among other things) they contain explicit zone names and zone purposes which better express the policy basis of their application.



It is apparent to the Advisory Committee that there are several key differences between the existing zones and the proposed zones such as (and in addition to the zone names and purposes):

- The application of mandatory height controls in all zones.
- The re-introduction of 'density' as a tool in the Limited Change Zone.
- The introduction of lot size in the Limited Change Zone.
- Notice and appeal provisions that can be 'turned' on or off.
- A slightly modified Table of uses.
- Ability to schedule modifications.
- Ability to tailor schedules on a micro, rather than macro scale.
- The potential to replace existing overlays and absorb them into the schedules to the new zones.
- The ability to articulate neighbourhood character objectives and preferences in the schedules to the new zones.

These and other differences are discussed elsewhere in the report and it is noted that the Advisory Committee does not support all of the proposed changes in the manner exhibited. Nor does the Advisory Committee support all the issues raised in the submissions. However, the Advisory Committee believes that the new zones serve an important role in providing a more seamless and transparent transition from *policy* to *control*, than the existing zones do.

The key to entrenching this distinction between the old and the new lies in the consideration of the 'Purposes' of the zone. The new zones are a more transparent reflection of the policy framework in many planning schemes, subject to the inclusion of very clear zone 'purposes'.

### **3.3 Summary of submissions**

Submissions to the new zones were received from local government, industry groups, community groups, private consultancies and private individuals. The submissions raised issues which generally fell within one of the following categories:

- Relationship to existing policy.
- Should the new zones be a priority?
- Conceptual issues.
- Technical or wording considerations.
- Implementation.
- Site specific requests.

Many submissions included comment on the appropriateness of *Melbourne 2030* as an overall planning strategy and expressed preferences for alternative growth strategies such as increased regionalisation. Some raised concerns about medium density housing in their area and expressed opposition to continuing change within their areas. The Advisory Committee notes these submissions. However, this is a review of one implementation tool of broad strategic planning policy and is not a review of that policy itself.

### **Relationship to existing policy**

Some submitters argued that the new zones had been prepared in a strategic vacuum and bore little or no relationship to other work being done at the state level including: *Melbourne 2030*, *Melbourne @ 5 Million*, the Urban Growth Boundary review, Activity Centre planning, and Housing Growth Requirements.

Chapter 4 of this report sets out a reasonably detailed history of the development of the concept behind the three residential zones. It is clear that the idea of three zones to reflect 'go go', 'go slow' and 'no go' areas has been developed as a result of reviews of the Victoria planning system, and is well founded in policy and strategic intent.

While some submissions explicitly supported the purposes of the new zones, a number of submissions were made that:

- The intentions of the zones need to be clearer (Sheehan, 73).
- The definitions of 'high' and 'medium' density need to be spelt out (Sheehan, 73).
- The purposes are ambiguous (Moreland, 194).
- The functional objectives of the three zones are not clear (Nillumbik, 142).

While there can be debate about how to identify 'high growth', 'medium growth' and 'low growth' areas, and how the amount of development in these areas might need to vary from location to location, this general approach of identifying 'high', 'medium' and 'low' growth areas is now well established in Victoria. In many schemes, it is a common feature of housing strategies; it is also a common feature of precinct structure plans where 'higher density' residential areas are often identified; and it was a key recommendation of the *Melbourne 2030* Audit.

The Advisory Committee received a number of submissions from councils with sophisticated housing policies who saw the new zones as a way to make those policies clearer in their schemes.

The Municipal Association of Victoria (MAV) (236) submitted:

*The MAV supports the general approach of providing Substantial, Incremental and Limited change areas and the direction of the new residential zones. It is considered that such an approach will allow councils to more adequately implement their strategic objectives and will deliver greater certainty to developers and the general public in relation to appropriate locations for more intense residential development and where such development should not occur.*

*This approach has already been adopted by a number of municipalities and is supported by the previous review of ResCode. The Standing Advisory Committee report on the review of the Good Design Guide in March 2000 identified that variation to ResCode may be acceptable based on a review of housing needs in a municipality and identification of areas within the municipality where change can be expected, based on three general areas: substantial change; incremental change and minimal change*

Certainly there is a need to test whether the new zones can deliver this approach to residential planning, and whether the purposes and provisions of the zones properly capture these concepts. However, the Advisory Committee believes that the general approach of identifying 'go go', 'go slow' and 'no go' areas has to be taken as the accepted approach to managing residential development in Victoria.

The new zones reflect the established approach to planning for residential development in Victoria, namely the identification of high, medium and low change areas.

### **Should the new zones be a priority?**

Certain submissions commented that Government should concentrate on implementing existing priorities, such as *Melbourne 2030* and the *Planning and Environment Act 1987* Review, before embarking on the residential zones review. Other submitters considered that the reform of the residential zones needs to occur in conjunction with other fundamental State Government initiatives, particularly the Housing Growth Requirements project, as the reform will result in tools that would help realise housing objectives. *Melbourne 2030*, *Melbourne @ 5 Million* and the *Victorian Transport Plan* were also highlighted as directly relevant initiatives, requiring integration.

Roberts Day (181) reflected on Melbourne's continued growth and change, commenting that statistics show that enough housing is seldom built to meet demand, but it is becoming harder to provide new housing. Implementation was seen by various submitters as a major failing in achieving the State's

strategic objectives. It was stressed that the implementation of the new zones needs to properly apply the strategic directions or Victoria will fail to meet sustainability, liveability and affordability objectives.

Knox (189) stated that a holistic approach is required to implement *Melbourne 2030*:

*Reviews of the planning provisions should not be undertaken in isolation of other Government policies and initiatives. For example, a review of the taxation regime; new public transport infrastructure; a considered release of land in growth corridors; and demonstration projects by VicUrban; are just a few initiatives that could encourage creative development solutions in activity centres, and deter development in dispersed residential areas which have poor access to services and facilities.*

According to some submissions, the global economic crisis has severely impacted on the financing of major developments. As a result, many developers are unable to fund the construction of major projects. Smaller infill redevelopment projects have therefore become critical to meeting Melbourne's housing demand over the next few years and these submissions suggest that every opportunity for new housing should be encouraged.

### **Conceptual issues**

The key conceptual issues arising from the submissions include:

- What is the role of the new residential zones?
- Do the new residential zones assist in the implementation of adopted State and Local Planning Policies?
- How do the zones support higher density development and assist in achieving policies of urban intensification?
- What is the relevance of the new residential zones to rural and regional areas – are they 'Melbourne centric'?
- How can the zones provide a clearer regime for managing height?
- How do the new zones assist in managing change to neighbourhood character?
- Should change be limited in some areas in favour of growth in others?
- How do the new zones relate to other provisions of the scheme including other residential zones not included in the review (for example the Mixed Use Zone), overlay controls and Clause 54 and 55 (*ResCode*).
- How do the new zones relate to the management of growth areas, greenfield sites and brownfield sites?

These conceptual issues are variously addressed throughout the report.

### **Technical and wording considerations**

Submissions relating to technical or wording considerations included:

- Issues relating to the table of uses for each zone and particularly the changes to the Substantial Change Zone to allow for *office* use and to the Limited Change Zone to add additional restrictions to uses such as *food and drink premises*.
- The extent of exemptions from notice and appeal rights for third parties.
- Issues pertaining to the detail of the subdivision provisions.
- Issues pertaining to the building and works provisions.
- Consideration as to how height controls should be worded.
- The schedules and their content, particularly what aspects of Clause 54 and 55 (*ResCode*) should be varied.

A number of submissions also noted errors in the drafting of the new zones as exhibited.

### **Implementation**

Many submitters were concerned that the proposed process of translating the zones was not revealed as part of the Consultation Draft and that as a result, they could not comment on the proposal. Councils raised queries and concerns about the staging of the implementation and timeframes to be set to undertake the work, as well as the level of resourcing and funding that would be provided.

Submitters sought more information on what level of strategic justification would be required to implement the new zones and populate the schedules. Many queried the role of local and State Government in the implementation process and asked about the level of public consultation proposed.

Some submissions flagged the need to establish sunset periods for existing controls and transitional arrangements for active permits or amendments.

### **Site specific requests**

Certain submissions made site specific requests for re-zonings from non-residential use to residential; or sought a translation from an existing residential zone to their preferred new residential zone (for example, Eastern Golf Club).

It is not the role of the Advisory Committee to make recommendations about which new zone might apply to a specific site or area. This will be part of the

implementation process managed by Government. The Advisory Committee has made recommendations on the implementation process as appropriate.

In some cases the requests involved the rezoning of land which was outside the Urban Growth Boundary and some of these submitters took the time to present to the Advisory Committee at the hearings. For the reasons outlined above, the Advisory Committee is not able to progress these submissions any further.

## 4. Policy context and strategic justification

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### 4.1 Planning for growth

#### Melbourne 2030

In 2002 the Victorian Government released *Melbourne 2030*, a long-term strategy for the growth and development of the metropolitan area. The strategy sought to protect the liveability of Melbourne in the face of a projected population growth of one million by the year 2030. That is, the population of metropolitan Melbourne was projected to reach over 4.5 million by the year 2030.

*Melbourne @ 5 Million* is the Victorian Government's response to the recent analysis of the 2006 Census Australian Bureau of Statistics (ABS) data, which projects a growth in population well beyond the 2002 projections, (which was based on the 2001 ABS census data). Current growth projections indicate that the city's population is likely to reach 5 million by 2026, much sooner than initially projected. *Melbourne @ 5 Million* is intended to provide policy initiatives that are complementary to the directions of *Melbourne 2030*. The two documents are to be considered together.

The projected population growth and the trend towards declining household size mean that more homes need to be built across the city and in regional Victoria. A range of strategies are needed to accommodate this growth in a sustainable and liveable way, providing greater diversity in housing options. The *Melbourne @ 5 Million* update has a strong focus on creating jobs and services in key Central Activities Districts and employment corridors that are closer to people's homes, meaning people will spend less time commuting.

Additional housing is still being directed to the established areas of Melbourne, near existing public transport services, close to activity centres and on infill or 'brownfield' sites. However 284,000 of the 600,000 homes required for Melbourne are proposed for the metropolitan growth areas.

The report of the Independent Expert Group commissioned by the State Government to review Melbourne 2030, *Melbourne 2030 – Audit Expert Group's Report (AEG, March 2008)*, recommended that priority be given to a range of matters including:

- Providing more housing in inner Melbourne to improve the jobs-housing balance of the area.

- Encouraging more residential development in established suburbs while maintaining liveability.
- Assisting councils to identify 'substantial change', 'incremental change' and 'limited change' areas in consultation with local communities.

### **Development in regional Victoria**

Many larger regional centres have also introduced settlement boundaries and identified growth areas (Shepparton, Mildura, Warrnambool, and Colac are some examples). In coastal areas, the *Victorian Coastal Strategy* identifies towns that are suitable for growth, while other towns are limited by settlement boundaries.

## **4.2 Accelerating residential development**

With the metropolitan strategy in place, and strategies being introduced in regional Victoria, action is needed to help implement the strategies in a timely manner. The State Government's response is through a range of initiatives and new planning tools and reforms.

For instance, the projected population growth and subsequent housing requirements are to be informed by municipal housing strategies. In April 2009, the State Government announced funding for metropolitan councils to undertake *Housing Growth Requirements* studies so that local housing strategies can be developed. This will occur as a staged roll-out with six councils to initially undertake pilot assessments of their residential development capacity and constraints. The pilot will then establish a standard methodology for the remaining council assessments. The Advisory Committee was advised that this work will be completed by October 2010 and introduced in early 2011.

New on-line planning systems and services are being developed and the *Planning and Environment Act 1987* is being updated to help streamline the planning system through more effective systems in order to help achieve the growth and development outcomes for Victoria.

A key element of these initiatives is the review of the residential zones in the Victoria Planning Provisions, with a view to using the zones to explicitly identify 'substantial change', 'incremental change' and 'limited change', as recommended by the *Melbourne 2030* Audit Expert Group.



## **Residential development in other zones**

It is important to recognise that irrespective of the new zones, significant residential development is expected to occur in a range of locations and within a range of zones. Current examples are:

- Significant increases in housing densities in activity centres which have variously been implemented by the Priority Development Zone, Comprehensive Development Zone, Business 2 Zone, and potentially by the new (unseen) Activity Centre Zone. Examples of this are apparent at Darebin (Priority Development Zone allowing up to 10 storeys); and Maribyrnong (Priority Development Zone allowing up to 14 storeys at Josephs Road, Footscray).
- Significant increases in housing densities on strategic redevelopment sites which have also typically been implemented by the Comprehensive Development and Mixed Use Zones. Examples of this can be found at the Amcor site in Yarra and the Tooronga Village site in Boroondara.
- Significant increases in urban renewal areas such as much of North and West Melbourne (allowing multiple levels in a Mixed Use Zone) or parts of Yarra which has also applied the Mixed Use Zone with significant development potential in areas like Victoria Street East, Richmond.
- More modest density increases in established strips such as Mt. Alexander Road, Ascot Vale and Bulla Road, Niddrie where increased residential densities are encouraged above commercial premises in the existing business zones where developments of at least four storeys are now common.

## **Proposed Activity Centre Zone**

A separate process is being undertaken for the development of an Activity Centre Zone. Once finalised, the Activity Centre Zone will form part of the suite of zones available to councils to apply to their activity centres. It is understood that the new Activity Centre Zone will be able to be fully tailored for each centre, through an accompanying Development Framework, which can specify improvements to the public realm and provide direction on the scale of future development. It is expected that this zone will provide for increased residential development in activity centres.

Unfortunately, the Activity Centre Zone is yet to be finalised, so this Advisory Committee is not able to consider the new residential zones in the context of the zone. When the new residential zones are implemented, the interface with the Activity Centre Zone will also need to be addressed.

Practice advice should explain how the zones are to be applied, particularly with regard to residential precincts forming part of an activity centre.

### 4.3 The Good Design Guide and ResCode

In 1995, the Victorian Government introduced a residential development code, the *Good Design Guide*, as part of a broader reform aimed at facilitating market-led urban consolidation in established residential areas.

*ResCode* was later released in 2001 in response to negative community perceptions of the *Good Design Guide*, with the main difference being that *ResCode* placed greater emphasis on neighbourhood character and environmental considerations. *ResCode* is implemented by provisions at Clauses 54 and 55 of all Victorian planning schemes. These provisions are based around a range of 'standards' that set out requirements for residential development.

*ResCode* does not address detached housing on lots above a certain size (these do not require a planning permit) or residential buildings of four or more storeys. Despite not falling within the ambit of *ResCode*, it is these forms of development which often attract negative community attention based on neighbourhood character impacts.

*ResCode* has been criticised by some for not going far enough in terms of addressing the impact of new development on the character of established residential areas, while those in the design professions consider that *ResCode* is too conservative in terms of design elements.

### 4.4 Using local policy

The *ResCode* provisions form only a part of the planning provisions addressing residential development. The Victorian planning system is structured in a way that a council's strategic objectives can be achieved by applying a range of zones, such as the residential zones, and overlays and particular provisions. Local refinement is provided through schedules available for most zones and overlays and in some particular provisions.

The Local Planning Policy Framework in a planning scheme (the MSS at Clause 21 and LPPs at Clause 22) sets out a council's intentions and expectations. It provides the guiding planning principles rather than the controls.

Ideally, planning schemes should identify areas suitable for additional housing opportunities, together with areas where the nature of existing residential development needs to be protected. Many planning schemes

currently identify these opportunities and constraints through their Local Planning Policy, but some argue that the local housing strategy is then not able to be adequately reflected in the existing residential zones.

The function of Local Planning Policy has become unclear over time, with general uncertainty about how it should be used and what it can or should deliver. This has resulted in exhaustive policies being put in place in planning schemes.

To address this, Action 10 in the *Cutting Red Tape in Planning* report (DSE August 2006) included a number of actions to make local policy stronger.

### **Making local policy stronger**

To inform the implementation of Action 10 – ‘*Make local planning policy stronger*’ of the *Cutting Red Tape in Planning* report, the Minister for Planning appointed a Working Group to:

- Examine the role of local planning policy in decision-making.
- Develop local policy implementation principles.
- Clarify the relationship between state and local policy.
- Promote local policy that implements local and state planning policy objectives.
- Inform a Ministerial statement on local policy.

The Working Group considered submissions from local government and the development industry, concluding that the strategically driven and largely performance based nature of the Victorian planning system forms a good foundation for land use planning in Victoria. In spite of this, the Working Group concluded that after ten years of operation, some components of the VPP needed ‘immediate clarification and action’, with the key issues being:

- *The development of voluminous local policies.*
- *The need to clearly define and differentiate state and local interests.*
- *The importance of effective policies and controls to deliver strategic outcomes at both state and local level.*
- *The need to revise land use zones and overlays so that they better fit state and local strategic objectives.*
- *That DSE and local government must work in partnership to achieve the improvements to the planning system.*

The *Making Local Policy Stronger* report released in June 2007 found that the structure and application of residential zones do not reflect the strategic intentions of state and local planning policies. The report recommended a range of actions, including ‘*Recommendation 1 – Provide greater certainty in*

*planning by making it easier to implement policy through planning controls'*. The report states that more opportunity should be provided to express state and local policy outcomes through zones, overlays and particular provisions, making specific recommendations on the Residential 1, 2 and 3 Zones.

The Government accepted the Working Group's recommendations and in its *Five Point Action Plan*, released in October 2007, committed to review the residential zones and associated provisions as a matter of priority. Reviewing the residential zones is the first initiative in the *Five Point Action Plan* to implement the recommendations of the *Making Local Policy Stronger* report.

This report is part of the review of residential zones.

## **Part 3: Conceptual and strategic issues**

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The Advisory Committee considers there are a number of key strategic issues that need to be considered before more technical or detailed issues can be resolved. These issues include:

- The role of the zones:
  - what are the zones trying to achieve?
  - the purposes of the zones.
  - are the zones policy in themselves or a tool to implement policy?
- How the zones can support higher density development and assist in achieving policies of urban intensification.
- How the zones can provide a clearer regime for managing height.
- How the zones can provide a clearer regime for managing character.
- The approach to limiting change in some areas.
- Managing growth areas, greenfield sites, brownfield sites.
- How the zones will operate alongside overlays.
- How the three zones fit with other zones that provide for residential development.
- Making implementation work.

This part of the report addresses these issues.

## 5. The role of the zones

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### 5.1 The zones as an implementation tool

A fundamental issue is the role of the zones.

It was submitted that the new zones do not do anything that cannot already be achieved under the Victoria Planning Provisions (VPP). This may be correct, but misses the point that the new zones have the potential to achieve residential development in a more streamlined and transparent fashion. The Advisory Committee considers that this is the key benefit of the new zones – a clearer planning framework where the policy intent is explicitly reflected in the zone name, purposes and detail.

*Making Local Policy Stronger* repeatedly spoke of the mismatch between the policy framework and the implementation package of zones and overlays. In this context that report noted:

*The working group observes that there is a disconnection between metropolitan policy and the distribution of residential zones in the metropolitan area.*

...

*The outcome of this lack of structure is uncertainty. While some Councils proactively identify 'go go' (substantial change), 'slow go' (incremental change) or 'no go' (minimal change) areas in their local planning policy framework, they do not have a suite of zones that provide a 'neat fit'.*

A number of submissions articulated that the residential planning regime under the VPP should be stronger, with less ambiguous controls, resulting in a reduction of red tape, making it simpler to comprehend and yet allowing a degree of flexibility.

Some submitters praised the clarity offered by a zoning regime that identified the level of change planned for specific areas. Others concluded the new zones will offer little more than the existing Residential 1, 2 and 3 Zones, even after significant strategic work is undertaken to implement the new zones.

Several submitters concluded that it is not clear that the enhancements afforded by the new zones are of such magnitude as to justify the substantial workload, costs and community anguish. The general concern is that the

planning system will be further burdened by the new zones due to all the required strategic work rather than made more efficient – an underpinning objective of the initiative.

### **The zones as tools**

The proposed zones (in whatever form they ultimately take) are not the only (or maybe even the main) implementation tools for housing strategies including the State government's housing strategy arising from *Melbourne 2030*. The zones are a component of a suite of provisions; they are the tools to control development in the residential areas.

The zones have to be seen in the context of a wider State Government housing implementation that apart from development in residential zones will potentially see:

- Significant increase in housing densities in activity centres which have variously been implemented by a range of zones.
- Significant increases in housing densities on strategic redevelopment sites which have also typically been implemented by a range of zones.
- Significant increases in urban renewal areas such as much of North and West Melbourne and parts of Yarra which have occurred within the Mixed Use Zone.
- Density increases in established commercial and public transport strips.

The proposed zones are only one tool to assist in responding to the housing demands.

## **5.2 Other housing issues**

A number of submissions addressed wider housing issues, including:

- the need to provide more direction on housing diversity – (Surf Coast 78), and
- the need to address other elements of housing policy such as accessibility, affordability and sustainability (various).

A number of submissions including Bayside (30) and Manningham (34) submitted that Clause 56 should be extended to include Ecologically Sustainable Development (ESD) requirements.

Whitehorse (186), as did many councils, submitted that affordable housing should be a specific outcome and purpose of the Substantial Change Zone. David Goodwin (201) submitted that the zone purposes need greater

emphasis on affordability. MacroPlan Australia (158) called for a clear definition of low cost, public and affordable housing, and asked how the new zones might assist to implement this. The Community Housing Federation of Victoria (187) submitted that community housing organisations registered with the State Government Housing Register should be exempt from the planning process.

### **Policy in the SPPF**

The new zones do not specifically address ESD, housing affordability or housing diversity. While the Advisory Committee acknowledges the importance of these issues, it considers these broader issues can be better addressed in other parts of the scheme especially the SPPF. The Advisory Committee concludes that broader housing policy issues should be expressed in the SPPF or MSS and not the zones.

## **5.3 Should the zones replace overlays**

It is not clear the extent to which the zones should or could replace existing overlays, though the Advisory Committee notes the Consultation Draft (at page 8) states:

*... the new zones have been designed to complement, rather than replace, other planning provisions such as overlays. Generally any overlays that currently apply will continue to apply.*

*However existing overlays may be removed if they include development requirements that can be included in one of the new zones. This will be considered on a case by case basis as part of the transition process.*

Even so, a number of submitters were concerned about the deletion of overlays and policies after the introduction of the new zones. It was submitted that where development opportunities are already limited by overlays, the Limited Change Zone was not required. Submitters noted that the intention must be that overlays are removed.

Surf Coast (78) noted that the existing overlay provisions in Design Development Overlays generally require a planning permit for all buildings and works, and in order to replace these provisions, similar requirements are needed in the Limited Change Zone.

Existing neighbourhood character policies may apply to the Mixed Use Zone or Township Zones and so would need to remain as they could not be fully replaced by the new zones (Horsham, 222).

A number of submitters were concerned that should overlays be removed, planning controls would be weakened.



## Is replacing overlays possible?

It is useful to consider the potential of the zones to replace the:

- Neighbourhood Character Overlay;
- Design and Development Overlay;
- Heritage Overlay; and
- Vegetation Protection and other environmental overlays.

In the existing and proposed residential zones, a number of 'developments' do not need a permit. By contrast, most overlays trigger a permit for development. As proposed, the schedules to the new residential zones theoretically enable an existing overlay to be absorbed into that schedule thereby avoiding the need for an overlay.

However, requiring a permit for all development in the new zones would mean requiring a permit for:

- Building and works associated with Section 1 (no permit required) uses – in practice this would be 'Place of worship' where the relevant conditions are met.
- One dwelling on any lot.
- Works normal to a dwelling.
- An out-building (other than a garage or carport) where the gross floor area of the out-building does not exceed 10 square metres and the maximum building height is not more than 3 metres above ground level.
- Certain fences.

Table 1 shows the standards that can be varied in the Neighbourhood Character Overlay compared to the zones. Clearly, the Neighbourhood Character Overlay is a more comprehensive tool for varying *ResCode* standards for residential development and would need to remain in place, even with the changes recommended by the Advisory Committee in Appendix D. The Neighbourhood Character Overlay will retain more flexibility on specifying alternative standards, and applies to single dwellings.

**Table 1: What can and can't be varied: NCO compared to the zones**

NCO		Zones	Clause 55 name	
A1	B1		Neighbourhood Character	
	B2	Vary	Residential Policy	
	B3		Dwelling Diversity	
	B4		Infrastructure	
A2	B5	Vary	Integration with the Street	
A3	B6	Vary	Vary	Street Setback
A4	B7	Vary		Building Height
A5	B8	Vary	Vary	Site Coverage
A6	B9	Vary		Permeability
A7	B10	Vary		Energy Efficiency
	B11	Vary		Open Space
	B12	Vary		Safety
A8	B13	Vary		Landscaping
	B14	Vary		Access
A9	B15	Vary		Parking Location
	B16	Vary		Parking Provision
A10	B17	Vary	Vary	Side and Rear Setbacks
A11	B18	Vary	Vary	Walls on Boundaries
A12	B19			Daylight to Existing Windows
A13	B20			North Facing Windows
A14	B21			Overshadowing Open Space
A15	B22	Vary		Overlooking
	B23	Vary		Internal Views
	B24	Vary		Noise Impacts
	B25	Vary		Accessibility
	B26	Vary		Dwelling Entry
A16	B27			Daylight to New Windows
A17	B28	Vary	Vary	Private Open Space
A18	B29	Vary		Solar Access to Open Space
	B30	Vary		Storage
A19	B31	Vary		Design Detail
A20	B32	Vary	Vary	Front Fences
	B33	Vary		Common Property
	B34	Vary		Site Services

## Testing whether overlays can be replaced

It is apparent to the Advisory Committee, based on some examples it has worked through, that absorbing an existing overlay into one of the new zone schedules will mean that some 'development' will no longer need a permit. This represents a significant change from the existing control regime.

The Advisory Committee has tested whether a number of overlays that were drawn to its attention could be converted to schedules in the zones in a 'policy neutral' fashion. These examples included absorbing:

- Design Development Overlay 3 at Manningham (Warrandyte) into the Limited Change Zone schedule.
- Significant Landscape Overlay 1 at Whitehorse (Blackburn Lakes) into the Limited Change Zone.
- Design Development Overlay 1 at Kingston (Coastal Areas) into the Incremental Change Zone.
- Significant Landscape Overlay 1 at Greater Bendigo into the Incremental Change Zone
- Design Development Overlay 4 at Moonee Valley (Mount Alexander Road) into the Substantial Change Zone.
- Design Development Overlay 8 at Manningham (Doncaster Road) into the Substantial Change Zone.

This exercise brought to light a number of potential problems apart from the inability of the new zones to trigger a 'development' permit in all cases.

Firstly, the conversion of environmental or landscape objectives into the new schedules did not always dovetail with residential character or design objectives. For instance, the objective in Significant Landscape Overlay 1 at Whitehorse is to retain the dominance of vegetation cover in keeping with the bush character environment of the area. This is an ambition which is not able to be controlled by any of the provisions of the new zones. Similarly, Bendigo's Significant Landscape Overlay 1 seeks to limit the removal of native vegetation which is also not controlled by the new zones.

Secondly, the detail in some of the overlays (see the height controls in Design Development Overlay 4 at Moonee Valley) contained many development nuances that might get lost when they are part of a wider package of character and design ambitions and not just height directions. Once again, the provisions of Significant Landscape Overlay 1 at Whitehorse contain very detailed tree protection measures that do not appear to be capable of being absorbed into any of the new schedules.

Thirdly, the VPP planning system actively encouraged Councils to prepare zone and overlay regimes and which have been introduced into the planning system, and accepted by the development and wider community. On this basis, the Advisory Committee believes this issue should be further considered.

### **Vegetation removal controls**

The Advisory Committee examined the potential for the replacement of vegetation protection and environmental overlays by way of a reference in the schedules to the new zones.

For matters of consistency the Advisory Committee believes it would not be desirable to try to replace vegetation protection or environmental overlays.

Firstly, and in a similar vein to the discussion relating to the development related overlays, the detail contained in many overlays relating to vegetation protection and environment would not be easily translatable for inclusion in a schedule to the new zones.

Secondly, and importantly, the application of overlays provides a clear and easily definable spatial identification as to which areas are impacted. Their removal would obscure where these areas are and more likely diminish the transparency of their current application. Moreover, should overlays be replaced in some jurisdictions but be retained in others, it may lead to two separate ways of controlling exactly the same thing.

### **Approach to overlays**

Aside from these practical difficulties the Advisory Committee considers that leaving the overlay regime in place will also greatly assist the smooth introduction of the new zones whereby the overlay regime will remain untouched and only the zones need to be changed.

None of this means to say that in the future a Council would not be able to use just a zone (and its schedule) rather than a zone and an overlay. It is more a reflection on the fact that after a decade of developing a regime based around the zone controlling the use, and the overlay influencing the development, there is now a vast body of approved work which is well understood and which should not be dismantled.

The Advisory Committee concludes that the existing overlay control regime should be maintained in all cases. Changes to the existing overlay regime should be avoided as it is not possible for the zone schedules to replace all the development triggers or all of the relevant overlay objectives or details.

## 5.4 Suite of residential zones

The proposed zones are not the only residential zones, but no changes are proposed to the other residential zones:

- Mixed Use Zone;
- Low Density Residential Zone, or
- Township Zone.

A number of submitters were confused about what the suite of residential zones will comprise. Some thought that the Low Density Residential Zone, Mixed Use Zone and Township Zone will be removed and that only the three proposed new zones would be available.

Greater Bendigo (42) suggested a residential conservation zone or equivalent to address residential areas that have a strong vegetation character. This would require vegetation removal controls being introduced into a residential zone, essentially replacing an overlay control.

### Improving all the residential zones

The Advisory Committee has already noted the degree to which some councils (for example Melbourne and Yarra) have used the Mixed Use Zone as their tool to identify areas of substantial change.

The Township Zone is applied to small towns and provides flexibility in the range of uses that can be established.

The Mixed Use Zone and Township Zone have the purpose:

*To encourage residential development that respects the neighbourhood character.*

This purpose is common to the other existing residential zones. It is difficult to understand why the improvements being contemplated through this process are not contemplated for the Mixed Use Zone and Township Zone. Surely any advantages that flow from the revised provisions would also flow to these zones.

Various regional councils commented that little attention is given to the regional context. Colac Otway Shire (39) suggested that further analysis of residential issues facing regional centres would assist in the creation of more relevant and user friendly planning controls, and commented that:

*Development within smaller regional centres is often hampered by a lack of servicing in the form of water and sewerage, proximity to environmentally significant landscapes and the need to preserve rural character. These unique challenges serve to highlight some of the*

*difficulties faced by rural councils in applying residential zones that appear to have been designed for application in a metropolitan setting.*

The Low Density Residential Zone is often applied to areas where it is considered important to maintain a rural character. This zone has the following purposes:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.*

The zone contains minimum lot size provisions:

*Each lot must be at least the area specified for the land in a schedule to this zone. Any area specified must be at least 0.4 hectare. If no area is specified, each lot must be at least 0.4 hectare.*

Low density residential areas are often a feature in small rural towns and cater for the lifestyle and amenity aspirations of country living. These areas are often not large, and are, by rural standards, relatively well located near to township facilities. These areas can play an important role in retaining population and providing housing choice in rural areas.

It is understood that in regional areas the Low Density Residential Zone is used in areas that have reticulated sewerage and so the minimum lot size of 0.4 hectare is not for effluent disposal. In some cases, smaller lots might be appropriate.

While lower density development could be achieved by application of the Incremental Change Zone or Limited Change Zone with an appropriate overlay, the Low Density Residential Zone would seem to be the obvious candidate to manage this type of development in a transparent manner. For regional councils to be able to use the zone more effectively, flexibility would need to be provided so that a smaller lot size could be scheduled.

The Advisory Committee recommends:

**Review the Mixed Use Zone, Township Zone and Low Density Residential Zone to provide for the same type of schedule that will be possible under the new zones.**

**Review the Low Density Residential Zone to provide for flexibility over the minimum lot size.**

## **6. Supporting higher density development**

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### **6.1 The role of the Substantial Change Zone**

A key issue is the interrelationship between the role/purposes of the Substantial Change Zone and its geographic application to achieve increases in housing density. The zone has a purpose:

*To deliver housing at higher densities in locations that offer good access to services and transport including activity centres and strategic redevelopment sites.*

Some submissions raised concerns over the role of the Substantial Change Zone stating that the parameters for the application of Substantial Change Zone need to be clearer (Macedon Ranges Residents Association (104) and Breese Pitt Dixon (196)).

Other submissions felt that the policy aim of higher density housing would not be achieved because the provisions of the new zone (with a mandatory 4 storey height limit) would limit opportunities for higher density development (Urban Development Institute of Australia (60)) or inhibit those councils that did not want buildings of that height in the zone..

#### **Applying the Substantial Change Zone**

There are two key roles for the Substantial Change Zone:

- identifying opportunities for higher density housing (being mindful that the really significant opportunities are also likely to be achieved with a non-residential zone or the Mixed Use Zone); and
- setting out controls to make the most of those opportunities.

There are decisions to be made as to:

- how liberal the Substantial Change Zone provisions are, that is, the degree of change it promotes; and
- the geographic extent of its application.

The Advisory Committee believes that the greater the degree of change allowed by the zone, the narrower its application will be. Promoting more intense development in the Substantial Change Zone will limit its application to areas that are appropriate in strategic terms for only that level of growth, and have a context (including a local political context) that will accept the level of change anticipated.

The choice is whether the zone is intended to drive more intense development in recognised redevelopment areas, or whether it is to be applied to a greater number of these areas. The Advisory Committee considers that the main advantage of the new Substantial Change Zone would be to identify a greater number of areas where higher density development is encouraged.

A number of MSSs, Local Planning Policies and Structure Plans identify land preferred for higher density development. Examples are:

- Kingston – promotes higher density housing development around the Cheltenham Business Centre.
- Glen Eira – identifies higher density areas around its higher order activity centres of Elsternwick, Carnegie and Bentleigh.
- Whitehorse – directs substantial change areas around activity centres and transport nodes and on key redevelopment sites.
- Manningham – identifies areas along its principal road corridors of Doncaster Road and around Westfield.
- Campaspe – identifies areas within walking distance of central Echuca as being appropriate for higher density housing.

Not all of the areas identified by these councils envisage a level of development anticipated by the exhibited Substantial Change Zone. For instance, in a number of cases, policies only support three-storey development as a form of substantial change in the context of that locality. This is particularly the case in regional areas where two storey dwellings might be considered 'substantial'. The choice left for a council in applying the Substantial Change Zone is to:

- not include all of these areas in Substantial Change Zone, this means they continue to be relatively invisible in policy; or
- change the emphasis of the Substantial Change Zone so that it can cover all areas where a planning scheme has identified more intensive housing development, and apply controls appropriate to that local circumstance.

If the Substantial Change Zone is to apply more widely than the current Residential 2 Zone, which is hardly applied at all, then the Advisory Committee believes it will need to apply to all areas councils have identified as suitable for higher density housing (even if the Residential 2 Zone has not been applied). The Advisory Committee stresses again, that the clear message from councils is that they will not apply the Substantial Change Zone in its exhibited format, and as such introducing it into the VPP is likely to be a wasted effort.



Establishing greater flexibility in the Substantial Change Zone will greatly assist those regional councils for whom 'substantial' change might be the difference between one and two storey development. Allowing a regional council to use the zoning system to distinguish between even conventional and medium density housing, will be a more transparent outcome than the present zones.

The Advisory Committee recommends:

**Modify the Substantial Change Zone so that it can be applied to all areas that councils have identified as suitable for higher density development.**

**Introduce the Substantial Change Zone to replace the Residential 2 Zone in all schemes, and in areas where councils have undertaken the appropriate strategic work that identifies areas designated for higher density development.**

## **6.2 The role of the Incremental Change Zone**

The role of the zones in municipalities that have identified areas of substantial, incremental and limited change will be relatively clear. But the zones will also serve a role in the short term (while housing strategies are fully developed and implemented) in municipalities that have yet to identify the level of change appropriate in its residential areas.

Some submissions commented that the current controls should remain in place until the new zones can be properly implemented taking into account existing policy and planning scheme controls.

For example, Glen Eira (171) is concerned that a generic default rezoning will afford less protection to residential amenity over the period it would take to amend the scheme and restore its current planning direction. The Council's submission comments that they have a well established housing strategy expressed through the planning scheme, and that they oppose a generic direct translation of the zones that would effectively result in their strategy being nullified.

Several submissions from the general public reiterated Glen Eira's sentiment, concerned that developers will exploit lesser controls available during a hiatus period between direct translation and a proper strategically-based implementation, to the detriment of the community.

The *New Residential Zones for Victoria Consultation Draft (February 2009)* – 'the Consultation Draft' suggests that a direct translation to the Limited Change Zone could occur for existing Residential 1 Zone and Residential 3 Zone

areas that have an overlay, such as the Heritage Overlay, that limits the opportunity for additional housing. Some submitters, including the Heritage Council (75) considered that this may not always be appropriate. Additionally, Macedon Ranges (138) commented that:

*... heritage areas are often located close to activity centres and thus application of the Limited Change Zone may stifle development objectives and good design outcomes.*

Urbis (140) argued that the Substantial Change Zone should be the default zone. Their submission used the Stonnington Planning Scheme to illustrate that many areas would have a reduced development potential under the translation proposals set out in the Consultation Draft.

The translation proposals are described on Page 7 of the Consultation Draft and note that the Residential 1 Zone would be translated to Incremental Change Zone and land within a Heritage Overlay translated to Limited Change Zone. Under these translation proposals, 74 per cent of Stonnington would be replaced by the Incremental Change Zone and 22.49 per cent would be replaced by the Limited Change Zone. In both cases a mandatory 9 metre height control applies. Urbis expressed concern that large expanses of residential land with a default maximum building height of 9 metres (3 storeys) is contrary to State policy direction for residential and population growth.

MacroPlan Australia (158) commented that there should be a program to identify additional land that may be suitable for the proposed Substantial Change Zone as an integral part of the initial implementation:

*In our opinion, it is the proper implementation of Substantial Change Zone that will assist in the protection of areas which are less suitable for increased residential densities. This will provide a clear direction to developers as to where development should occur, and provide a clear process advantage to the developer to ensure timely delivery of housing.*

A number of submissions suggested that the Substantial Change Zone should be automatically applied to large remnant land parcels that represent strategic redevelopment sites, activity centres and existing land in the Residential 2 Zone.

### **Managing development with a local housing strategy**

The issues around translation and implementation are discussed in chapter 10. In essence, the Advisory Committee has concluded that there should be a 'policy neutral' translation of existing zones that applies the Incremental Change Zone as the default zone, and a modified Substantial Change Zone to areas identified in policy as suitable for housing diversity. This is to be

followed by a longer term application of the zones based on revised housing policies

The Advisory Committee does not consider that it is appropriate to delay development in a municipality solely on the basis that the council has not completed a housing strategy. Planning strategies/controls are always evolving, and development should not be stopped on the basis that further strategic work is anticipated.

This means that those municipalities that have not identified areas for higher density, such as Boroondara, will need to apply the Incremental Change Zone across their entire municipality. This could be a step backwards for housing consolidation if the argument is run that development within the Incremental Change Zone should exclude higher densities.

There are potentially three ways to address this issue:

- Delay the introduction of the new zones until a council has completed its housing strategy. This would mean that the old and new zones would run in parallel for up to three years.
- Apply the Substantial Change Zone as the default zone to replace the Residential 1 Zone as was suggested by a number of submitters.
- Amend the Incremental Change Zone so that it does not add additional restrictions to the Residential 1 Zone until a housing strategy is approved.

The Advisory Committee considers that a delay in introducing the zones will be counter productive. It would defeat the purpose of having new zones if they are not used.

Applying the Substantial Change Zone as the default zone cannot be supported because it would obscure which areas are truly suitable for substantial change. If the Substantial Change Zone were applied as the default, it would cease to have meaning.

The Advisory Committee therefore favours the option of applying a modified Incremental Change Zone. In saying this, it is important to recognise that the Incremental Change Zone will replace the Residential 1 Zone and so will also be a location for some 'higher density' housing until housing strategies are fully implemented. The effect of this (if the zones are not modified) will be that controls over development are tightened, not loosened, because a mandatory 9 metre (3 storey) height limit will be introduced.

The only option to avoiding a step backwards (by applying an unjustified mandatory height limit across most of Melbourne in place of the current

Clause 55 standards) is to configure the Incremental Change Zone so that (at least until housing strategies are introduced) it caters for both incremental **and** substantial change where this is appropriate.

If the new zones are implemented before a housing strategy is developed for a municipality, the Incremental Change Zone will most likely include the areas (if any) that would be identified for substantial change in the housing strategy.

### **6.3 The role of the Limited Change Zone**

The Consultation Draft identifies some of the key features of the Limited Change Zone as follows:

- The zone is to identify neighbourhoods where there is limited opportunity for change.
- This opportunity is limited due to specific characteristics of an area.
- Development will need to be consistent with the existing neighbourhood character.
- The appropriate form of development will depend on the specific characteristics of the neighbourhood to be protected. (Page 37).

Clearly the Limited Change Zone will provide limited, if any, scope for higher density development although a number of submissions suggested other reasons for its application.

A small number of submissions commented that the Limited Change Zone should be capable of being applied not just on a neighbourhood character basis, but also on a purely strategic basis – to discourage out of centre development and support activity centre development (Kris Hansen, 162).

Kingston (38) submitted that the Limited Change Zone should be applied to recently developed areas on the basis that:

- change was unlikely in the short term as the areas had just been developed; and
- applying the Limited Change Zone would simplify population and housing capacity calculations.

The Advisory Committee considered whether the Limited Change Zone might be applied to areas:

- that were not particularly well located or serviced but otherwise did not have development constraints; or
- as a 'trade off' or 'balancing' of applying the Substantial Change Zone to other parts of the municipality.

The Advisory Committee could see little merit in applying the Limited Change Zone for these 'strategic' or 'tactical' reasons, and there was little support for these sorts of approaches.

There was broad support that the Limited Change Zone simply be applied to those areas that had development constraints.

The Advisory Committee does not accept that the Limited Change Zone should be applied to recently developed areas. The main advantage of the new zones is a transparent policy basis. Applying the Limited Change Zone to areas that would be suitable for incremental change is counter productive. As to demographic and housing capacity projections, the Advisory Committee thinks that if these are to be done properly, they will need to look beyond just the zoning of the land. The Advisory Committee was shown maps prepared by Maribyrnong (166) that showed how this could be done in a very clear and thorough fashion.

The Advisory Committee recommends:

**Apply the Limited Change Zone only to areas where there are limited opportunities for change due to identified characteristics such as heritage, environmental, landscape, neighbourhood character or other values.**

## 7. Purposes, objectives and names

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### 7.1 The importance of the zone names and purposes

The Advisory Committee believes that the zone names and purposes are critical, as they send a very clear message about future use and development. The zone purposes must be a clear statement of the use and development expectations within an area, and the zone names should reflect these purposes.

As discussed, housing policy has evolved in Victoria to identify three 'types' of areas: 'go go', 'go slow' and 'no go' areas, and the role of the zones is to reflect these policy approaches in zones and provisions, thus making local policy stronger and more transparent.

The zones need to properly articulate the housing and urban character or design outcomes that are to be achieved in these types of areas. The Advisory Committee also wants to avoid mixed messages such as is apparent in the existing Residential 2 Zone which, on the one hand seeks 'medium or higher densities' while wanting residential development that 'respects the neighbourhood character'.

The Advisory Committee believes that the role of the three zones can be summarised as:

- **Substantial Change Zone:** also known as the 'go go' zone, is where a high level of growth is expected. Housing growth is the priority in this zone and as a consequence there is an expectation of a new, evolving urban character.
- **Incremental Change Zone:** also known as the 'slow go' zone, is where, on balance, a medium level of growth is expected. The zone provides for flexibility in growth and diverse housing outcomes that respects the neighbourhood character.
- **Limited Change Zone:** also known as the 'no go' zone, – where a low level of growth is expected. This zone makes neighbourhood character a priority, which may have the effect of providing little prospect for housing growth.

### 7.2 Are the purposes clear?

A number submissions found the purposes of the zones unclear (Mt Eliza Action Group (26), Howard Patterson (8), Urbis (140)) or vague (Josephine

McLean, 207). Some considered that there was not enough differentiation between purposes of the different zones (Patterson (8), Urbis (140), Housing Industry Association (150) and Manningham (34)). There was also the view that the meanings of substantial, incremental and limited change in the zones often signify different things in different areas and that there should be the opportunity to define these terms to be locally relevant (Manningham, 34).

It was submitted that there were confusions and contradictions within references to housing densities and types (Boroondara Residents Association, 232) with no clear differentiation between 'higher densities' in the Substantial Change Zone and 'range of densities' in the Incremental Change Zone (Urbis, (140) and Moreland (194)).

While the Advisory Committee considers that the purposes of the new residential zones are better than the existing zones, further improvements could be made. It is important to note that some of concerns of submitters will be able to be addressed in the new zones by including specific neighbourhood character or design objectives in the schedule to the zones.

The purposes relating to neighbourhood character and design specifically reference residential development. The Advisory Committee believes that the schedules should be capable of including such objectives for non-residential uses as well as residential uses; and that the purpose needs to reflect this. Revised purposes are specified in the sections below. The reference to 'residential development' has been changed to 'development' in the purposes relating to neighbourhood character, built form and design.

The three proposed zones maintain the following two common purposes, (the first and last purpose of each zone):

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.*

The Advisory Committee considers these purposes to be clear, but takes this opportunity to suggest that the first purpose (also the standard first purpose of every zone and overlay in the scheme) which currently states:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

could be truncated to read:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework.*

It is opportune to simplify the wording of this important first purpose, especially given the current program of rationalising planning schemes and the local planning policies.

The Advisory Committee has concluded and recommended that the zone names and the purposes be modified to better reflect the intent and application of the zones. The full extent and implication of this recommendation is provided in Appendices C and D. In response to the issues raised above, there are three key changes in the revised zones as follows:

- The reference to 'residential development' has been broadened to provide for all 'development' in the purposes relating to neighbourhood character, built form and design.
- The purposes regarding implementing the SPPF and the LPPF and providing for non-residential uses to serve local community needs has been maintained.
- The first purpose of the zones has been abbreviated to delete the specific reference to the MSS and local planning policies while maintaining the general reference to the Local Planning Policy Framework.

### **7.3 Broader character objectives**

A number of submissions sought to broaden the character objectives that should be taken into account.

Many submitters were supportive of the inclusion of neighbourhood character and design objectives and it was suggested that the purposes of all the zones should refer to character and design objectives elsewhere in the scheme. The Macedon Ranges Residents Association (104) submitted that purposes should acknowledge issues and objectives for rural areas and 'rural' character.

#### **Making schemes transparent**

The Advisory Committee considers that a broad reference to character and design objectives elsewhere in the scheme is potentially confusing. If these matters are relevant, then they will be part of the permit application consideration in any case.



If these other objectives are important, they need to be brought into the schedule, and it should not be left to the developer or objector to search through the scheme trying to find objectives to support their positions.

Any relevant objectives on neighbourhood character and design (and any related heritage, environmental, landscape, or other special character) that are suitable to be included in the schedule, should be included in the schedule.

## 7.4 Naming the zones

The zone names were considered by some submitters to be either confusing, complicated, dismal, inappropriate or cumbersome (Wangaratta (17), Indigo (19), Ararat (28), Urban Development Institute of Australia (60), Margot Breidahl (62), Ballarat (131) and (Moreland (194)). The names were thought to be a missed opportunity to communicate the policy directions. These names are communicated to all new house buyers by way of Section 32 statements<sup>1</sup>. The zones do not contain the word 'Residential', nor do they specify the outcome to be achieved.

The Advisory Committee notes the other 'residential' zones that would remain in the VPP:

- Low Density Residential Zone;
- Mixed Use Zone; and
- Township Zone.

The Advisory Committee agrees that, at a minimum, the zone names should clearly communicate the residential nature of the zones.

While it is tempting to defer to the current names for the three zones (that is, Residential 1, 2 and 3 Zones) due to the simplicity of a numbering system, the Advisory Committee considers that this would miss the opportunity to communicate a clear message about the future development expectations for an area.

By identifying high, medium and low growth areas, the new zones reflect an established practice in planning for residential development in Victoria. Several councils apply a three tiered approach for residential development to implement their housing strategies.

The Advisory Committee considers this to be a stand-out feature of the new zones, as it provides clarity around the level of change that can be expected

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<sup>1</sup> Section 32 information (so called after section 32 of the *Sale of Land Act 1962*) is the information the vendor is required to supply when land is sold.

in different areas, and that this can be mapped accordingly. However, to make this work effectively, it is important that the zones can be differentiated at a glance through their names and purposes. Clear parameters also need to be established on where the zones can be applied.

While the terms 'substantial, incremental and limited' are clearer than '1, 2 and 3' in naming the zones, they still do not specify the actual strategic outcomes sought to be achieved. The discussion below puts forward alternative zone names.

## 7.5 Incremental Change Zone

This zone will be the default or more commonly applied residential zone, in the same way that the Residential 1 Zone is the typical residential zone now. The purposes of the Residential 1 Zone are:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households.*
- *To encourage residential development that respects the neighbourhood character.*
- *In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.*

The Incremental Change Zone is identical, except for the additional purpose:

- *To manage residential development to achieve neighbourhood character and design objectives specified in a schedule to this zone.*

### **Incremental Change Zone – Housing objectives**

Submissions observed that there was no clear differentiation between 'higher densities' in the Substantial Change Zone and 'range of densities' in the Incremental Change Zone (Neale Burgess (6), Moreland (194) and Urbis (140)). It was also observed that incremental change areas could become substantial change areas 'by stealth' (South Gippsland (40), Marie Harrod (56) and Greater Dandenong (94)).

The Consultation Draft identifies the role of the Incremental Change Zone as:

*This zone accommodates additional housing that respects the existing character of diverse neighbourhoods across Victoria's towns and suburbs.*  
(Page 27)

Of the three zones, it is the most appropriate zone for new medium density housing development to occur, but these areas will also comprise existing lower density housing. There will also be situations where higher densities will be appropriate, depending on the neighbourhood character outcomes. Where a schedule specifies, the Incremental Change Zone can provide for a new preferred future character for an area.

The Advisory Committee believes that the difference between 'higher densities' and 'range of densities' is clear. The purpose to provide a 'variety of dwellings' is important for the Incremental Change Zone as the zone encourages diversity. For true diversity to be realised, the zone should provide for diversity in density, dwelling type and character. The purpose should also be clarified by referring to dwelling 'types'.

### **Incremental Change Zone – Character purposes**

There was concern that 'respecting' neighbourhood character is ambiguous (Greater Dandenong, 94) others felt that development should 'respond to' rather than respect neighbourhood character (Roberts Day, 181).

The Advisory Committee believes that 'respond to' is not clear enough, as it only requires that development acts in response to neighbourhood character, but does not explain that the response should be positive. 'Respect' on the other hand, immediately implies that a positive response is required. The existing Residential 1 Zone has maintained that term for some time now; it is well known and understood. The Advisory Committee considers that the use of the term 'respects' when referring to the neighbourhood character objective is appropriate.

The character purposes of the zone may be complemented by further local neighbourhood character and design objectives in the schedule. The Advisory Committee agrees with the Consultation Draft that this does not need to be compulsory in the Incremental Change Zone.

### **The title 'Incremental Change Zone'**

It is not clear that the term 'incremental change' really communicates much, as incremental change is a feature of many areas and many zones. As discussed in section 6.2, this zone may also see substantial change in municipalities that have not introduced a housing strategy.

In providing for a mix of low, medium and higher density housing, the zone will provide for 'diversity' in housing outcomes, in terms of density, dwelling type and character. The zone's purposes should reflect these housing outcomes.

The role of the Incremental Change Zone, is then not to simply provide for 'incremental change' (change by increasing in number, size, quantity, or extent) since in some situations, existing housing will be left as is or refurbished. The zone provides for 'diversity' and its name should reflect this. Additionally, the Advisory Committee sees some merit in retaining the numbering of the zones as this concept is well entrenched and understood in the VPP.

The Advisory Committee recommends:

**Rename the Incremental Change Zone to 'Residential 1 - Residential Diversity Zone'.**

**Change the purposes of the Incremental Change Zone to read:**

- **To implement the State Planning Policy Framework and the Local Planning Policy Framework.**
- **To provide for a diversity of residential development at a range of densities with a variety of dwelling types.**
- **To encourage development that respects the neighbourhood character.**
- **To manage development to achieve neighbourhood character and design objectives specified in a schedule to this zone.**
- **In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.**

## **7.6 Substantial Change Zone**

The Advisory Committee considers that the 'Consultation Draft' articulates a simple message for the three zones that has not always found its way into the exhibited purposes – in particular, the priority for the Substantial Change Zone is to identify areas for housing growth.

In terms of metropolitan growth, *Melbourne 2030* and its counterpart *Melbourne @ 5 Million*, seek to direct growth to activity centres, the growth areas, near services and transport and to strategic redevelopment sites. The Urban Growth Zone is used in the growth areas, it is understood that the Activity Centre Zone will be applied to activity centres, while the Substantial Change Zone will be the instrument to achieve higher density housing development for other residential areas.

Other than the standard purposes to implement the SPPF and the LPPF and to provide for non-residential uses that serve local community needs, the exhibited zone purposes are as follows:

- *To deliver housing at higher densities in locations that offer good access to services and transport including activity centres and strategic redevelopment sites.*
- *To manage residential development to achieve neighbourhood character and design objectives specified in a schedule to this zone.*

### **Substantial Change Zone – Housing objectives**

It was submitted that the purpose should refer to ‘high density’ not ‘higher’ density development (Maroondah, 151). Concern was expressed about the reference to ‘good access to services and transport’. It was submitted the ‘good access’ to transport and services needs to be quantified – the reference to ‘good access’ is too broad and open to interpretation (Melton (102), Corangamite (135) and SOS (229)).

It is the Advisory Committee’s view that a reference to ‘higher densities’ is appropriate as the term is clear and is easily understood. The term ‘higher density housing’ has been defined in the glossary accompanying *Melbourne 2030* as:

*Housing units on a given area of land that are more numerous than the average in the surrounding locality.*

Determining what constitutes ‘higher density’ will need to be addressed on a case-by-case basis, as part of the strategic work for an area. What might be considered a higher density in one area, may not be a higher density elsewhere. This distinction is discussed further in section 6.1 of this report.

In the context of growth areas, reference to ‘higher density’ would maintain its relevance in that the density would be measured against other residential areas identified in a precinct structure plan, rather than the point of reference being an undeveloped paddock.

The Advisory Committee considers the reference to ‘good access to services and transport’ in the second Substantial Change Zone purpose will only open up areas for debate. Instead, the Advisory Committee has recommended that it would be better to provide detailed guidance on where the zones should be applied in a Practice Note. (See section 10.1)

### **Substantial Change Zone – Character purposes**

It was submitted that the Substantial Change Zone should not have compulsory neighbourhood character objectives as the objective is to change existing character. The Urban Development Institute of Australia (60) sought the removal of neighbourhood character objectives in areas of substantial change.

The Substantial Change Zone will host the most significant redevelopment of the three zones and inevitably, that change will be different to the existing built form and settlement patterns that exist in the area.

The Advisory Committee contends that it is critical that a council be allowed (and encouraged) to articulate what it wants that new development to look like and in that context, the opportunity to specify 'built form outcomes and design objectives' in the schedule is strongly supported.

The character purposes of the zone may therefore be complemented by design and built form objectives in the schedule.

For example a schedule could include the following design objectives:

- To create a street of prominent, individual and diverse buildings of high visibility.
- To support development in the order of 10 storeys high, in a landscape setting.

or alternatively:

- To facilitate the development of six storey apartment developments built to the side boundary of lots.

Each area may be different, but so long as the opportunity is provided in the schedule to express the intended built form outcome, (in much the same way that the City of Melbourne has done in its Design Development Overlays), then the new zone will have delivered a tangible improvement on the current regime.

But having design objectives and built form outcomes is a different issue to neighbourhood character objectives. Since its introduction as a concept and then as a requirement into the planning system about 10 years ago, 'neighbourhood character' has been the source of much frustration, debate and uncertainty. The Advisory Committee notes that 'neighbourhood character' is entrenched in the existing zones and in the main assessment tool being *ResCode*. The Advisory Committee does not recommend that this convention be dismantled.

However, the Advisory Committee does feel that in the Substantial Change Zone, where new development is actively encouraged, a reference back to neighbourhood character will inevitably anchor the assessment to '*what is there now*' rather than to '*what should be there*'.

Clear design objectives and built form outcomes are all that is needed in the Substantial Change Zone in an area where that 'character' is to change and where a new character is to be created. In this context, the Advisory

Committee considers that it is instructive to reflect on the experiences of those councils that have implemented housing strategies that, more or less, comply with the 'substantial', 'incremental' and 'limited' model which is clearly preferred in the new zones.

Whitehorse prepared a Housing Study in about 2003 and according to Clause 21.06 of its scheme, it seeks to ensure that future housing stock is able to respond positively to the population and social trends that will shape the future housing needs within the City. The Housing Strategy accords with the accepted categories for the distribution of housing being areas of:

- Minimal change;
- Natural change; and
- Substantial change.

According to the Whitehorse MSS (at Clause 21.06):

*Areas of **minimal change** are those areas which have recognised heritage, environmental and landscape significance.*

*The areas of **substantial change** and the strategic redevelopment sites are anticipated to accommodate in the order of 40 percent of the additional dwelling stock, subject to the completion of detailed Structure Plans.*

*All other residential areas in the City are nominated as areas of **natural change** where more modest change is likely to occur. (Emphasis added)*

Clause 22.03-4 of the Whitehorse Planning Scheme contains a local policy which deals with areas of Substantial Change, which notes:

*To facilitate higher density housing in areas of substantial change, adjacent to Activity Centres and on key redevelopment sites as appropriate.*

*In considering any application for development or subdivision within an Area of Substantial Change, the objectives of this policy and the identified Design Issues must be addressed.*

Notably, not one of those objectives relates to 'character'.

By contrast, Clause 22.03-5 which deals with areas of 'natural change' has extensive reference to character objectives and outcomes and it explicitly omits the Substantial Change areas from character considerations noting:

*The preferred future character will be achieved by the following Design Objectives and Design Responses except in areas of Substantial Change,*

*where the objectives and Identified Design issues in Clause 22.03-4 apply.*

In the Advisory Committee's view, this provides an acceptable and established template for the assessment of design in areas that are likely to support change. Design objectives and built form outcomes need to be specified; but assessment should not be inhibited by character considerations which are inevitably embedded in the status quo which the Substantial Change Zone is likely to change.

The Substantial Change Zone would be improved by deleting the reference to neighbourhood character and including a clear reference to design objectives and built form outcomes. The Advisory Committee recognises that not all areas will need to identify design objectives and built form outcomes, and on this basis the Advisory Committee recommends that listing these in the schedule be optional.

### **The title 'Substantial Change Zone'**

It was suggested that the name of the zone should be changed to promote greater community acceptance, improve transparency and to maintain relevance over time. Concern was expressed that the name doesn't adequately convey the outcome to be achieved (Banyule, 16). A range of alternative names was suggested.

The Advisory Committee agrees – a crude reference to 'substantial change' in the name of the zone does not properly depict the key purpose of the Substantial Change Zone. The zone should be renamed to 'Residential 2 – Higher Density Zone' to reflect its principal objective to deliver housing at higher densities. This zone name will result in a neat fit in terms of the existing descriptive residential zone names, the Low Density Residential Zone, the Mixed Use Zone and the Township Zone.

### **Conclusions**

The Advisory Committee recommends:

**Rename the Substantial Change Zone to the 'Residential 2 - Higher Density Zone'.**

**Change the purposes of the Substantial Change Zone to read:**

- **To implement the State Planning Policy Framework and the Local Planning Policy Framework.**
- **To deliver housing at higher densities.**
- **To manage development to achieve design objectives and built form outcomes specified in a schedule to this zone.**



- **In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.**

**Make design objectives and built form outcomes optional in the schedule to the Substantial Change Zone.**

## **7.7 Limited Change Zone**

The Consultation Draft identifies some of the key features of the Limited Change Zone as follows:

- The zone is to identify neighbourhoods where there is limited opportunity for change.
- This opportunity is limited due to specific characteristics of an area.
- Development will need to be consistent with the existing neighbourhood character.
- The appropriate form of development will depend on the specific characteristics of the neighbourhood to be protected. (Page 37).

The only exclusive Limited Change Zone purpose is:

*To ensure residential development protects the neighbourhood character of the area.*

### **Limited Change Zone – Character purposes**

A number of submissions raised concerns whether the purposes of the Limited Change Zone would be effective. Concerns were expressed that ‘protecting’ neighbourhood character was ambiguous (Greater Dandenong, 94) and the purpose to preserve neighbourhood character should be stronger (Fred Cox et al, 80). Other submissions felt that the zone purposes should be extended beyond just neighbourhood character and reflect that it will be applied to areas of ‘sensitivity’ (Heritage Council of Victoria, 75).

The difference between the Incremental Change Zone and Limited Change Zone hinges on the difference between ‘respect’ and ‘protect’. These terms can be ambiguous. The Advisory Committee considers that the difference between the zones would be clearer if the Limited Change Zone made specific reference to the fact that it identified areas with specific qualities that lead to the zone being applied, rather than simply to protecting neighbourhood character. The schedule would then provide detail on precisely what these qualities were.

Submissions questioned the need for neighbourhood character objectives in the Limited Change Zone:

- Many rural councils (Wellington (29), South Gippsland (40) and Towong (83)) submitted that the requirement to specify neighbourhood character objectives was too onerous or irrelevant to rural areas and that the schedule should be able to have 'nil or none specified'.
- Melbourne (223) submitted that if the reason for the application of the Limited Change Zone does not relate to neighbourhood character then neighbourhood character and design objectives should not be required.

Concerns were expressed that the Limited Change Zone does not include a statement about the extent of change (Moreland, 194). The Advisory Committee considers that this is precisely the role of the objectives in the schedules.

The Advisory Committee considers that the Limited Change Zone should only be applied where there are specific characteristics that justify its application, and it is important that these be identified in the schedule to the zone. The Advisory Committee agrees with the Consultation Draft, that the Limited Change Zone schedule must include neighbourhood character and design objectives.

The Advisory Committee disagrees with the Consultation Draft, where it suggests (at Page 37) that the zone may identify areas '*where there is limited opportunity for change ... because of environmental constraints*'. The new residential zones are essentially a tool to tackle two types of 'change' – change through housing growth and the resultant change in urban character. The new zones will not respond to environmental risk issues; this is the role of the land management overlays of the VPP.

### **The title 'Limited Change Zone'**

Suggestions for an alternative name for this zone included 'Residential Conservation Zone' (Macedon Ranges (135) and Patterson (8)) and 'Restricted Residential Zone' (Roberts Day, 181).

The Advisory Committee agrees that the Limited Change Zone is foremost about the protection of an area. As a result, the zone presents little scope for housing growth because opportunity will be constrained by the obligation to preserve valued characteristics of the area. The areas will see limited change and the name of the zone should reflect this.

This zone name will result in an overall neat fit in terms of the naming convention used for the full suite of residential zones, a practice where the intent of the zone is clearly communicated:

- Residential Diversity Zone;
- Higher Density Zone;
- Low Density Residential Zone;
- Mixed Use Zone;
- Township Zone; and
- Limited Change Zone.

The Advisory Committee recommends:

**Re-name the Limited Change Zone to 'Residential 3 - Limited Change Zone'.**

**Change the purposes of the Limited Change Zone to read:**

- **To implement the State Planning Policy Framework and the Local Planning Policy Framework.**
- **To identify areas where there are limited opportunities for change due to identified characteristics such as heritage, environmental, landscape or other special values.**
- **To manage development to achieve neighbourhood character and design objectives specified in a schedule to this zone.**
- **In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.**

## 8. Managing height

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### 8.1 Should the new zones set height limits?

There was general support for the ability to address building height within the new zones. However, there were differing views on how this could or should be achieved

The proposed zones contain a provision which specifies (in the case of the Incremental Change Zone and the Limited Change Zone) that (with emphasis):

*The height of a building **must not** exceed a building height specified in a schedule to this zone. If no building height is specified the height of a building **must not** exceed 9 metres (3 storeys) unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, in which case the building height must not exceed 10 metres.*

*This does not apply to:*

- *An extension of an existing building that exceeds the specified building height provided that the extension does not exceed the existing building height.*
- *A building which exceeds the specified building height for which a valid planning or building permit was in effect prior to the introduction of this provision.*

In the Substantial Change Zone, the height is 13.5 metres (4 storeys), with an allowance for 14.5 metres height on sloped land. The schedule restricts the heights that can be set in each zone.

The provision is essentially the same as Standards A4 and B7 in Clause 54 and 55 but:

- allows the schedule to vary the height;
- makes the height mandatory; and
- restricts how the heights can be varied by the schedule.

Table 2 compares the new height controls with the existing.

**Table 2: Control of heights**

	Existing	Proposed
Residential 1 Zone	max. 9 metres	max. 9 metres (3 storeys)
Incremental Change Zone	Discretionary	Mandatory Can be varied higher or lower
Residential 2 Zone	max. 9 metres	max. 13.5 metres (4 storeys)
Substantial Change Zone	Discretionary	Mandatory Can only be varied to be higher
Residential 3 Zone	max. 9 metres	max. 9 metres (3 storeys)
Limited Change Zone	Mandatory	Mandatory Can only be varied lower

The height controls within each of the new zones would override the provisions of Clause 54.03-2 and 55.03-2 (*ResCode*). Essentially *ResCode* would only have applicability with respect to height within the remaining Mixed Use Zone and Township Zone.

With the exception of the Residential 3 Zone and some Comprehensive Development Zones, the typical method for managing height has been through the use of various overlay controls. A range of overlays has been used, but most commonly the Design and Development Overlay.

### **Should the zones have height controls?**

Many submitters supported the inclusion of height controls in some form within the new zones, although there were some exceptions.

A number of submitters expressed concern that the height control in the Substantial Change Zone would lead to underdevelopment. Others who would like to apply the Substantial Change Zone (for example Manningham (34), Corangamite (135), Bass Coast (134)) stated that the four storey height would remove this as an option for them. They simply would not apply it.

Of all of the issues before the Advisory Committee, the question of height has been one of the most contentious, quite apart from the identification of an actual height. There is a threshold question of whether the new zones should even include height controls before moving to questions of whether they should be mandatory or discretionary.

The Advisory Committee recognises that the VPP clearly contemplate the inclusion of height controls within zones or overlays. For example, the current Residential 3 Zone provides a height provision at Clause 32.06-5. In this respect, the Advisory Committee accepts there is a role for height provisions within the new zones.

However the introduction of height controls and the form of such provisions requires further thought.

### **Height control not a magic bullet**

There have been many Panel reports since the introduction of the VPP that have considered proposed height controls. The most common means of implementing height controls has been the use of the Design and Development Overlay. These past reports have cautioned that the introduction of height controls does not necessarily result in good urban design outcomes. Height controls should be about urban design/built form outcomes. Height can be used to establish a preferred character or to maintain existing character where height is a key component of this character. Height should not be used as a de-facto control over the density of development to be achieved.

### **Premature application of controls**

The Advisory Committee considers that there is also a fundamental issue with requiring a height limit to be set in all cases.

Sometimes it is not obvious what height is appropriate on all sites in an area undergoing substantial or incremental change. This is not to say that a general indication of height is not possible, but the way the zones are configured, it will not be possible to exceed the maximum height by as much as a centimetre. The Advisory Committee questions whether this is the intent of the zones and is the preferred planning regime in areas identified for new and emerging character.

### **Apartment style development in the Substantial Change Zone**

Broadly speaking, Clause 55 is tailored to townhouse development. That is, it is designed to typically manage low rise infill development up to three storeys. This is recognised by the fact that it does not apply to developments of four or more storeys. As proposed, the Substantial Change Zone would only allow apartment style development at four storeys.

On larger sites in inner and middle Melbourne, often developments that are two or three storeys at their interfaces have been approved with a taller element within the site. It is difficult to see why this form of development would be prohibited within the Substantial Change Zone. This sort of development may also be appropriate in the Incremental Change Zone where it might not be considered 'substantial change' but could be justified in the local context. If a four storey development (with lower rise interface) respects neighbourhood character in the Incremental Change Zone, why should it be stopped?

In this context, the Advisory Committee accepts that height controls are acceptable in all three zones.

## 8.2 Mandatory height limits

It was submitted that the height limit should be discretionary and that flexibility is a more important outcome than providing certainty.

The provisions in the zones set out a mandatory height limit. While the provisions allow the schedule to the zones to set a different height, this new height is also mandatory. (Refer to Table 2 on page 64).

There were varying views on whether the controls should be mandatory or discretionary. The UDIA (60), HIA (150) and a number of councils submitted that the height controls should be discretionary not mandatory. Others like the Carlton Resident's Association (176) were strongly in favour of mandatory provisions. Many submitters such as the HIA (150) called for greater flexibility. The Planning Group (43) submitted that:

*The setting of mandatory height limits within a zone is a clumsy tool and overtly arbitrary approach to development control in any setting. The use of such an inflexible mechanism sends out the entirely wrong message to all involved in or engaged by the planning process.*

### The zones as a tool

The observation that the new zones are a tool, and not policy, is important. It seems to the Advisory Committee that as tools the new zones have been compromised by trying to achieve two contradictory policy goals: a limit on height where it is not justified, and a push for taller building where it is. There is every danger that in practice this will result in a limit in height where taller buildings are justified, and a push for taller buildings where they are not warranted.

The Advisory Committee is aware of a number of previous Panel reports where the issue of mandatory and discretionary controls were raised, nearly all in connection with 'height' controls, including:

- Amendment C20 to the Melbourne Planning Scheme;
- Amendment C2 to the Bayside Planning Scheme;
- Amendment C7 to the Queenscliff Planning Scheme;
- Amendment C52 to Port Phillip Planning Scheme;
- Amendment C55 to the Colac Otway Planning Scheme;
- Amendment C99 to the Yarra Planning Scheme; and
- Amendment C33 to the Manningham Planning Scheme.

The conclusions reached by those Panels have consistently established the principle that the appropriate (or preferred) means of expressing requirements in planning schemes is as a 'discretionary' provision, with 'mandatory' requirements only being applied where the specific circumstances warrant a mandatory control. The Bayside C2 Panel concluded the following in considering whether mandatory height controls were appropriate:

- *Height controls are contemplated in new format planning schemes.*
- *A 'Design and Development Overlay' is the most appropriate mechanism to implement height controls.*
- *There must be real evidence of demand for development exceeding the proposed height limits.*
- *The height controls must be soundly based and be the outcome of thorough strategic research.*
- *Height controls must be seen in the context of built form outcomes and objectives rather than just being a prescriptive tool.*
- *While mandatory height controls are contemplated, they are the exception and must achieve a clear built form objective.*
- *Discretionary height controls are the preferred way to deliver a performance based outcome.*

The Panel considering Amendment C33 to the Manningham Planning Scheme regarding Doncaster Hill stated:

*It is recognised that the Victorian Planning Provisions were designed as a broadly performance-based planning system with a minimum of mandatory controls. However, it is also a strategically-based system in which the controls must be justified by a sound and clearly expressed planning strategy. Within this system, it is reasonable to suggest that the sounder the strategy, the greater the justification for mandatory controls.*

In the Manningham case, the controls were based not just on a comprehensive planning strategy, but also on a detailed analysis of alternative urban forms. The analysis examined both visual and amenity impacts, leading to development of building envelopes designed to maximise achievement of the strategy's objectives.

That Panel considered that the thoroughness of the strategic and analytical work in that case justified the use of mandatory controls for the key elements of building height, interface with the boulevards and the height of design elements. The Advisory Committee considers that the level of strategic and



analytical work has not been undertaken to justify the use of mandatory controls in the three exhibited zones.

The 'default' position in the Victorian planning system is for discretionary controls unless there are persuasive reasons to mandate an outcome. As noted in Manningham Amendment C33, mandatory provisions should only be permitted where there is a detailed and defined planning outcome to be achieved and there has been a detailed analysis of alternative urban forms.

However, the Advisory Committee believes that in the Limited Change Zone there may be a role for a mandatory control where the strategic work has been undertaken to justify it. On that basis, the Advisory committee supports the ability for a council to 'schedule-in' a mandatory height control, but only in the Limited Change Zone.

It should be noted that a 'mandatory' control is not the same as a 'prescriptive' control, though the two are sometimes confused. The Advisory Committee is fully aware of the desire to see stronger policy and more prescription in planning schemes, but does not see that this necessarily implies a lack of discretion.

### **Mandatory default and inability to vary**

Another critical issue is that the introduction of the new zones is likely to be a step backward on 'Day 1' if a mandatory height control is introduced across all Residential 1 Zone areas. The zones state:

*The height of a building must not exceed the height specified in a schedule to this zone.*

This means that discretion cannot be reintroduced by the way of a schedule.

The Advisory Committee is concerned that the zones have been drafted in a way that works against the achievement of policies in *Melbourne 2030*, and established drafting practice. It is difficult to see how they fit with established approaches under the VPP. On the basis of the consultation draft and the submissions, the Advisory Committee has struggled to find a basis for mandatory default height controls.

The Advisory Committee concludes:

- Height controls are supported as providing guidance.
- There is no basis for State standard mandatory height controls.
- The height controls proposed will restrict higher density development opportunities, working against Government policy and good planning.

- Mandatory height controls are only appropriate in specific locations in the Limited Change Zone where they can be justified based on strategic research.

The Advisory Committee notes that with the introduction of the new zones, some development that is already being assessed under planning controls or building controls will need a permit to exceed the discretionary height limits. Transitional arrangements should be introduced to cover this development.

In support of the primary recommendation to adopt the new residential zones as set out in Appendix D, the Advisory Committee recommends:

**Make the height limits discretionary (that is, require a permit to exceed the default height in the zone or modified height in the schedule), unless later strategic work results in a deliberate decision to apply a mandatory limit in the Limited Change Zone, or in an overlay which can be strategically justified.**

**Introduce transitional arrangements for development captured by the new requirements for a permit to exceed the new discretionary height limit.**

**Prepare a Ministerial Direction on the application of height controls in the zones, including:**

- **When a height lower than 4 storeys is justified in a Substantial Change Zone.**
- **The use of a mandatory height limit in the Limited Change Zone.**

## **8.3 Flexibility in setting heights**

The height limit can only be varied upwards in the Substantial Change Zone and downwards in the Limited Change Zone. It was submitted that in each zone, the height limit should be capable of being varied higher or lower. The Incremental Change Zone provides flexibility for the limit to be varied up or down.

### **8.3.1 Substantial Change Zone**

It was submitted that there is no need for a default height control in the Substantial Change Zone and that an analysis of the site and its locality (as currently required) would identify the appropriate height for a development. Many submitters considered that the new zones required flexibility in the application of height controls in order for them to better reflect the strategic objectives of the planning authorities.

Many of the councils which had identified areas of 'go go', 'slow go' and 'no go' found that they could not apply the three new zones as the height limits did not reflect the built form outcomes sought for each area.

For example, Corangamite (135) and Bass Coast (134) expressed an interest in applying a Substantial Change Zone in some of their townships, but noted that four storey development outcome had no place in these rural situations. Other rural councils such as Macedon Ranges (138) submitted that the zones are too Melbourne focussed.

In Kingston (38), the Council submitted that it had a clearly defined strategy for directing intensity of development, but that in the majority of its 'increased housing density areas' the height limit was below that provided for in the Substantial Change Zone.

Similarly in Manningham (34) the heights in its preferred development areas around activity centres and along main roads were less than that sought by the Substantial Change Zone. Its Design Development Overlay 8 areas, which were logically positioned for the Substantial Change Zone, have a height limit of only 11 metres compared to 13.5 metres in the Substantial Change Zone (which cannot be varied downwards in the exhibited zone). Manningham wants to apply the Substantial Change Zone but will not do so because of the lack of opportunity to articulate its desired outcome which the Advisory Committee notes has been strategically justified through an amendment process.

### **Substantial change at three storeys**

The Advisory Committee was shown examples of a development in Whitehorse at three storeys which resulted in a tenfold increase in dwelling density. The Advisory Committee considers this to be a substantial change, and represents the type of development that might be appropriate in a wide range of locations that could help provide new housing in established areas.

Unfortunately, the proposed zones do not accommodate this example as it is not possible to set a height limit of less than 13.5 metres (4 storeys) in the Substantial Change Zone. This means that councils cannot (and will not) apply this zone where they believe a height of less than 4 storeys is appropriate. A number of councils submitted that they have areas identified for higher density development where the preferred height is three storeys.

It is naïve to think that enforcing a minimum amount of development in the Substantial Change Zone will increase the supply of housing – all that will happen is that councils will not apply the zone as widely (or at all). It is analogous to mandating that vegetables can only be sold in 10 kilogram lots in an effort to increase the consumption of vegetables.

The Advisory Committee considers that the approach of applying the Substantial Change Zone to all areas where a planning scheme has identified more intensive housing would best achieve the benefits that can be delivered by the new zones, namely a clearer and more transparent planning system. This approach would require some changes from the exhibited Substantial Change Zone. It would also mean accepting that in some cases these areas will not be suitable for buildings of 4 storeys and in other cases may be suitable for buildings much higher than this.

Substantial change, in say Manningham, will be different from substantial change in many of the inner areas of Melbourne and certainly will be different from outer and rural areas. If height controls are to be included within the new zones, they should be able to meet the needs of councils from Yarra to Yarriambiack, and Casey to Corangamite. This approach will allow the Substantial Change Zone to be applied more widely.

The Advisory Committee recognises that there is a danger that councils may identify areas for substantial change, but then (with good intentions) apply a range of controls that make it impossible to achieve that potential. A reduced height restriction might be one such control that would work against achieving policy objectives.

These issues could be managed by setting out clear directions on when a lower height in the Substantial Change Zone would be justified. This could be done by way of a Ministerial Direction, in the same way that Ministerial Direction 6 sets out requirements in relation to rural residential development, and this was noted as a recommendation in section 8.2 previously.

The Advisory Committee recommends:

**Amend the schedule of the Substantial Change Zone so that it is possible to vary the preferred height control higher or lower as required.**

### **8.3.2 Limited Change Zone**

Concern was expressed that some existing overlays specify a greater height than 9 metres. Applying the Limited Change Zone should not apply a greater restriction. It was submitted that controls may be applied for different purposes and these areas might not necessarily be a 'no go' area.

The City of Melbourne (223) submitted that the average height of terraces around Parkville and East Melbourne was closer to 10.5 metres, and while some of these areas may be suitable for the Limited Change Zone (for strategic reasons), the maximum height limit of 9 metres in this zone did not

work and would restrict quite reasonable infill development that matches the height of these terraces.

Under the proposed zones, the Advisory Committee envisages planning scheme translations where the Limited Change Zone will be applied – and hence a 9 metre height limit will be applied – on the basis of an overlay that is totally unrelated to height or sets its own height limit higher than 9 metres. This will not be good planning. It can only be addressed by changing the proposed zones to provide more flexibility.

The Advisory Committee recommends:

**Amend the schedule of the Limited Change Zone so that it is possible to vary the height control higher as required (or apply a mandatory height control).**

## **9. Limiting change in some areas**

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The new Limited Change Zone proposes to introduce controls on minimum lot size for subdivision; and the maximum number of dwellings permitted on a property. Some existing overlays already have similar provisions, however the Advisory Committee has already noted that the existing suite of overlays should be retained. That being the case, the need for a density or minimum lot size provision has been questioned.

### **9.1 Minimum lot size**

The schedule to the Limited Change Zone can specify a minimum lot size, and this is a new provision compared to the Residential 3 Zone.

It was further submitted that the minimum lot size provisions also should be applied to the Incremental Change Zone.

There is no ability to set a minimum lot size in the Incremental Change Zone or the Substantial Change Zone; this is the same as the existing provision in the Residential 1 Zone and Residential 2 Zone.

A minimum lot size was not supported by a number of submitters. However, it was generally supported by others where existing overlays specified minimum lot sizes. The Mount Eliza Woodland Residents Association (41) highlighted the importance of the ability to specify a minimum lot size.

Many submissions questioned how a minimum lot size would be calculated taking into account such things as common property (Collie Planning (119), HIA (150), Ratio Consultants (175), Knox (189)).

Warrandyte Community Association (90) referred to the minimum lot size provisions of the Design Development Overlay 3 that applies to the Warrandyte Township. This control specifies a minimum lot size for subdivision of 1000 square metres. However it also includes a detailed averaging option.

The Advisory Committee has concluded that the zones are not capable of replacing overlays in all situations. Currently any minimum lot size would be within an overlay, and the Advisory Committee has recommended that this continue. There is no need to include this provision within the zone.

The Advisory Committee notes that the Low Density Residential Zone currently has a flexible (upwards) minimum lot size provision, but that this is based on effluent disposal and not matters such as character.

The Advisory Committee recommends:

**Delete the ability to specify a minimum lot size in the Limited Change Zone.**

## 9.2 Dwellings per lot

A number of submitters queried the basis for the introduction of the density controls into the Limited Change Zone.

This zone allows for a schedule to set a minimum lot size and a maximum number of dwellings per lot. However, the schedule does not allow for just one dwelling to be specified per lot (it provides two dwellings as the lowest maximum).

Two dwellings can be constructed on a lot (subject to a planning permit) in the Limited Change Zone, but a minimum lot area may prevent the land from being subdivided. The two provisions do not correspond.

The Limited Change Zone specifies (at Clause 32.06-6) that:

*The number of dwellings on a lot must not exceed the number specified in a schedule to this zone.*

The Schedule to the Limited Change Zone specifies (at Clause 3) that:

*Maximum number of dwellings (must not be less than two dwellings)*

- *The schedule may specify the maximum number of dwellings that can be constructed on one lot.*

The minimum lot size is a new provision compared to the Residential 3 Zone.

The only current zones that apply restrictions on the number of dwellings are the:

- Low Density Residential Zone – limits the number of dwellings on a lot to two.
- Rural Conservation Zone – only allows one dwelling per lot.

### Differing views on density controls

Greater Dandenong (94) submitted that controls over the number of dwellings per lot should be provided in each of the zones. Melton (102) recommended a density per hectare.

It was submitted that the specification of a maximum number of dwellings per allotment was not useful in meeting planning objectives. More than one dwelling on a lot would require a planning permit for construction and where a minimum lot size was present this could not be further subdivided (Patterson, 8).

Surf Coast (78) submitted that the maximum number of dwellings on a lot should be related to lot size.

Greater Shepparton (121) noted that in the Residential 1 Zone under the Floodway Overlay, only one dwelling on a lot is permitted.

In Manningham, existing Design and Development Overlays specify a preference for one dwelling per lot. In the Design Development Overlay 3 applying to Warrandyte, more than one dwelling is permitted but the minimum lot area of 1000 square metres prevents any subdivision.

There was some confusion as to whether the second dwelling would include a Dependent Persons Unit.

DPCD advised that the imposition of a density control provides a level of certainty into the process by making it clear that only a specified number of dwellings could be constructed on a lot. That said, DPCD acknowledged that this new provision was reflected in some existing overlays but its inclusion in the new Limited Change Zone was not based on any detailed analysis.

### **Are density controls a good planning tool?**

It is not clear to the Advisory Committee how the number of dwellings per lot can be a well-founded planning control especially where lot sizes vary. Only in areas where lots were of an identical size could it make sense.

The new zones are tools to implement policy. The issue is whether density is the right tool to achieve certain outcomes or whether some other approach is more appropriate.

In actually applying a density control, the Advisory Committee would expect the same principles that apply to an amendment to be applied, especially the issue of strategic justification. This is a fundamental aspect of the Strategic Assessment Guidelines and it is not clear from the discussion paper that such a control was even contemplated, let alone recommended.



It is interesting to reflect on the history of 'density' as a planning tool in Metropolitan Melbourne<sup>2</sup>. In the 1960s when there was the first real 'flat boom' in the metropolitan area, certain parts of Melbourne (St. Kilda, Hawthorn and Elwood for example) were targeted for attention.

The flats that were erected during this time did not require a planning permit but simply a building permit and the endorsement of a 'car parking plan'. If a developer could provide the then regional planning authority (the Melbourne and Metropolitan Board of Works), with a plan showing sufficient car spaces for the number of flats proposed, then no planning permit was required.

Community anger at these units (and perhaps at the process) led to the first attempt to standardise residential planning controls in Melbourne in what became known as Amendment 30 to the Melbourne Metropolitan Planning Scheme (MMPS). This amendment introduced the requirement for a planning permit for almost all residential development, other than a detached house, and it enshrined in the metropolitan-wide planning scheme a raft of discretionary considerations such as open space, car parking, side setbacks, front setbacks and permissible height indicators. Significantly, density was not included as a consideration.

It is acknowledged that many councils at this time devised their own 'multi-unit codes' which included a variety of provisions including density and 'saturation' techniques.

With the advent of *VicCode 1* in 1992, the *Victorian Code for Residential Development Subdivision and Single Dwellings (1992)*, it was felt that a complementary code was needed to address medium density housing. This gave rise to *VicCode 2 – Victorian Code for Residential Development – Multi-Dwellings (1993)*, and for the first time 'density' became a formal consideration being one of the 'elements' of the code that needed to be addressed. This density guideline figure was carried over, more or less, into the *Good Design Guide* in 1995.

The Standing Advisory Committee set up to review both the *Good Design Guide* and *VicCode 1* (Final Report – March 2000) discussed 'density' in detail and looked at the practical reality of the density calculation. The Advisory Committee recommended (page 151):

*Density should be removed as a means of assessing whether residential development is appropriate.*

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<sup>2</sup> This history is based on commentary in the Bayside C2 Panel Report (2001) in response to a request by that Council to introduce density provisions

*The new Residential Code should not include any standards referring to density. It should be made clear in the Code and any supporting Planning Practice Notes, Ministerial Direction or other documentation that reference to densities as a means of assessing residential development is not acceptable either formally in any local provisions of a planning scheme or informally in any reference documents, which the responsible authority may rely upon.*

In that context, the Bayside C2 Panel noted:

*... it is evident that 'density' as a planning tool has only had a ten year shelf life and it has coincided with the most controversial ten year period in Melbourne's residential development history. While it is much too simplistic to link the one with the other, there is anecdotal evidence to support the view that, in this period, it was the arithmetic of the density calculation based on either VicCode 2 or the Good Design Guide, which was the key factor in determining how many units a developer would seek to achieve. Other more important factors such as site context, character and streetscape played a secondary role to density.*

The Advisory Committee considers that there is no strategic basis for the introduction of a limit on the number of dwellings per lot in the Limited Change Zone.

The Advisory Committee recommends:

**Delete the ability to specify a limit on the number of dwellings in the Limited Change Zone.**

## **Part 4: Implementation issues**

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The Consultation Draft document for the new residential zones stated:

*The Government wants to ensure that the transition to the new residential zones occurs with the least possible impacts on the community and the day-to-day business of councils.*

Submissions raised a range of issues about the implementation of the zones, with a number of submitters raising concern that the Consultation Draft did not put forward an implementation proposal as part of this review. The issues raised in submissions are summarised and discussed below.

## **10. Making implementation work**

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### **10.1 What principles should inform implementation?**

Most council submissions expressed concerns about the translation from the old zones to the new, and raised issues of resources, timeliness, equity and accuracy of conversion (among others). These concerns were supported by others.

Submitters held strong views about the different possibilities for implementation and were concerned that they were unable to comment directly on a specific process. Many held the view that given much of the functionality of the new zones rests on their execution, the method for implementation should be resolved through engagement with stakeholders. They sought specific information on the proposed:

- Staging of the implementation.
- Level of strategic justification required to implement the new zones and populate the schedules.
- Resourcing and funding.
- Timeframes.
- Role of local and State Government in the implementation process.
- Level of stakeholder consultation in the process.
- Transitional arrangements for active permits or amendments.
- Sunset periods for existing controls.

#### **Seamless transition from existing zones to new zones**

Submissions commented that the Consultation Draft does not set out a clear set of principles to be applied for the implementation of the zones.

Some councils have existing provisions in place in their planning scheme, such as Design and Development Overlays, that they submit should be able to be used to populate the new residential zone schedules. Other councils are currently undergoing a planning scheme amendment process, or have completed some strategic work, such as a housing strategy or neighbourhood character study, that they expect should influence the application of the new zones and the content of the associated schedules. Cardinia (118), Greater Dandenong (94) and Yarra Ranges (197) are examples of this, together with Melbourne (223), where Heritage Victoria has developed a World Heritage

Environs Area Draft Strategy Plan for land around the Royal Exhibition Building and Carlton Gardens.

Most developed land is zoned residential. Changing the residential zones is potentially a disruptive exercise and it will be important to provide a seamless transition to the new zones.

### **Policy neutral transition in a clear and transparent manner**

Certain councils are concerned that the translation of their existing planning scheme provisions will not be capable of a policy neutral outcome due to the nature of the proposed schedules and the extent of their existing overlays. For instance some submitters mentioned that the new schedules did not accommodate vegetation provisions, others mentioned their existing height controls were incompatible with those provided for under the new zone. Manningham Planning Scheme's Design Development Overlay 8 for example, provides a sub-precinct based height control, with height limits of 9 or 11 metres, accompanied by conditions regarding street setbacks and minimum lot sizes.

Some submitters worried that existing planning scheme provisions would be opened for re-testing through the amendment process. They highlighted that no existing provision should be removed from their planning scheme or the importance of any provision diminished through the translation. The new residential zones are a tool to implement policy; they are not policy in themselves. As such they are capable of expressing a range of policy outcomes. The Advisory Committee has already concluded that a feature of the new zones will be a more transparent and easily understood policy and control framework.

It has become common practice when revising the policy basis of planning schemes to undertake a 'policy neutral' revision that addresses language and structural issues before substantial policy changes are introduced. The Advisory Committee considers that a similar approach has merit in applying the new residential zones. Under this approach the first phase of implementation will be to introduce the new zones without trying to change or update councils' policy settings. While such an update may ultimately be necessary, and is likely to flow from the Housing Requirements Project, the Advisory Committee believes that a two step process of a policy neutral implementation followed by a policy update will provide the most straightforward approach.

### **Minimum cost and strategic work from councils**

Housing strategies and neighbourhood character studies are seen as inherently complex, expensive and time consuming to develop. As already

noted, some regional council submitters commented on their negative experience of the rural zones implementation, where lack of resources and an absence of implementation guidance hampered constructive and timely outcomes. Metropolitan submitters talked about the workload impacts of initiatives resulting from *Melbourne 2030*, noting that many strategic programs resulting from that strategy are still yet to be completed.

Submitters called for State Government funding to be provided for all councils to undertake the implementation work. Due to an expressed experience of under-funding as a result of major changes imposed by State Government, submitters emphasised that the funding needs to be commensurate to the actual extent of the work to be undertaken in order for the zones to be properly implemented. They also stressed the need for a realistic plan and timeframe for implementation to be put in place, with appropriate support and guidance.

Moreland (194) commented that many commitments were made in the Northern Regional Housing Statement in about 2003 prepared by DPCD in partnership with municipalities in the northern region:

*These commitments were to provide councils with housing analysis, trends information and market research to inform the development of local housing strategies and policies. This information was never delivered and as a result many councils within the northern region have not undertaken a housing strategy. It will be impossible to effectively introduce the new zones without this work, therefore the DPCD must follow through on their commitments made through the Regional Housing Statements as a priority'.*

Councils also commented that there is a serious lack of coordination in State Government planning initiatives, with projects being released for consultation and implementation on an ongoing basis, (SPPF Review, the Act Review, Activity Centre Zone Project, Residential Zones Review and the like). This lack of coordination makes it difficult for council strategic planning units to balance the competing demands and resource the work.

The implementation of the new residential zones should minimise the amount of strategic work and the cost to councils. A clear advantage of the policy neutral approach is that it does not trigger a need for extensive exhibition and consultation process. This will reduce the immediate cost and strategic work burden on councils.

### **Opportunity to undertake further strategic work post transition**

In order to properly implement the new zones so that they are strategically applied to achieve the preferred use and development outcome, submitters

envisage a large body of strategic work will be required of councils. Submitters are overwhelmingly concerned about the resource burden this will cause.

For most councils, it is anticipated that the absence of a readily available and up-to-date strategic foundation upon which to apply the new residential zones will result in vast expanses of Incremental Change Zone, in place of the Residential 1 Zone at the transition phase, with an obligation to undertake housing capacity assessments and develop growth targets to support the proper implementation of the new zones. The neighbourhood character reference in the proposed schedules also suggests an expectation that there will be strategic justification for a preferred character.

In addition, it was submitted that schedules should have strategic justification within the MSS, suggesting that the residential zones implementation will need to be accompanied by a review of the MSS.

The expectation should be that over the next two years councils complete or revise their housing policies and introduce them into their schemes using the new zones.

The Advisory Committee considers that introducing the new zones ahead of revised policy is by far the best way to proceed. It will allow any revised policy to be shaped in the full knowledge of the tools that can be used to implement it. In the past, uncertainty about, or lack of focus on, implementation methods has made a number of planning strategies difficult to implement. If the new zones are in place, the objectives and strategies of any housing policy can focus on some very clear questions, such as:

- Where should the Substantial Change Zone be applied?
- How should the schedule to the Substantial Change Zone be configured?
- Where is the Limited Change Zone justified?

### **Guidance and practice notes**

Submissions highlighted the need for the new zones to be released in conjunction with a consultation and awareness program to assist councils, industry bodies and the public to understand the rationale behind the ultimate reform package. This collaborative approach was considered to be essential to managing community expectations. The briefing with the DPCD Regional Managers Group strongly emphasised this point.

A clear transition and implementation program was considered necessary, together with information explaining the reasons for the reform and practice

advice setting out the appropriate use and application of the zones. Submissions suggested content for the practice advice, including:

- Model or template schedules.
- Criteria/guidelines for the application of the zones, with case study examples.
- Clarification as to whether the schedules can apply to broad areas or specific precincts.
- Guidance on how to apply the zones in conjunction with other overlays and zones, (the Design Development Overlay or the Activity Centre Zone for example).
- Direction on how the suitability of areas for limited, incremental or substantial change will be assessed.
- Clear direction on the level and form of strategic work required to justify objectives in the schedules and modified siting and design guidelines.
- Clear direction on the role of each residential zone, particularly regarding the scope of the Limited Change Zone.
- Guidance on how housing targets and State strategies such as *Melbourne 2030* need to be taken into account.

Submitters asked for this practice advice to be introduced at the same time as the new zones, complemented by appropriate funding and training, to provide clarity from the outset and consistency across the State. Councils also asked for advanced notice of the Department's intentions to assist in a smooth transition when the time comes. The Advisory Committee supports the need for information to be released at the same time that the zones are finalised.

The Advisory Committee recommends:

**The Department of Planning and Community Development prepare and release guidance material at the same time as the new zones are announced.**

## 10.2 Effective implementation

The Terms of Reference note that the Advisory Committee's review of the residential zones will make recommendations on their implementation.

Some submitters were concerned at the enormity of applying the new residential zones across Victoria. The Advisory Committee acknowledges that it is a large task and that a clear implementation program will need to be developed to make it work.



Other submitters expressed concern that State level implementation by the DPCD will enforce a metropolitan wide agenda that is not cognisant of the local context; and that regional issues will not be properly addressed. These submitters maintained that due to the differences between municipalities across the State, a 'one size fits all' approach is unsatisfactory. They argued that local differences need to be properly recognised and addressed, and that local government is best placed to do this.

There was a mixed reaction from local government in relation to implementation arrangements and whether a Ministerial call-in was considered appropriate to translate the zones. Little opposition was put forward to a completely policy neutral translation by way of a Ministerial amendment under Section 20(4) of the Act to expedite a move from one zoning regime to the next, and avoid two regimes operating in parallel. Concerns centred on the possibility of direct translations that may facilitate additional development opportunities.

Most council submitters and other stakeholders did not support any Section 20(4) intervention without council agreement.

A number of council, resident and community group submissions insisted that consultation should be an integral part of the implementation process. Bayside (30) asserted that effective community engagement is required on the application of the zones to manage expectations, create awareness and educate the community.

Conversely, other submitters, including some other councils, hold the view that the translation of the new zones would be best made by State Government, to ensure a quick and smooth transition.

UDIA (60) proposes that this should at least occur for the implementation of the Substantial Change Zone. These submitters are concerned about how councils are going to interpret and spatially apply the new zones within their municipality, suggesting that they will take a conservative approach, avoid the Substantial Change Zone and favour the Limited Change Zone.

Tract (95) commented that the implementation should be reviewed by an independent advisory committee to ensure the zones are implemented in a sustainable and equitable way across the State.

The Advisory Committee considers that the key to effective implementation is to adopt a two stage process consisting of:

- a policy neutral implementation process that introduces the new zones as soon as practical, followed by
- a policy based implementation.

### **Policy neutral stage 1 implementation**

Some municipalities have completed and developed housing strategies, but many have not.

For municipalities that have implemented a housing strategy it would be possible, and desirable, to implement the three zones (as required) with individually tailored schedules as part of the introduction of the zones.

The relevant councils would need to:

- identify areas nominated for limited change or higher density housing;
- develop schedules; and
- prepare and liaise on amendment documentation.

It would be a wasted opportunity not to implement the new zones in municipalities where they can be supported by the existing policies.

For municipalities that have not implemented a housing strategy there is little choice, if timely implementation is desired, but to implement the Incremental Change Zone with policy neutral schedules.

The Advisory Committee considers that this approach would provide an incentive to councils to develop and implement housing strategies as a matter of priority, so that they could gain the full benefit of the new zones.

The Advisory Committee considers that it would be appropriate for the Stage 1 implementation to be facilitated under Section 20(4) of the *Planning and Environment Act 1987*.

### **Housing strategy implementation**

In metropolitan councils there is an important need to implement housing strategies to help achieve metropolitan objectives aimed at addressing housing demand and population growth pressures. Similar pressures exist in a number of regional centres.

However, there can be no short cut to developing the detailed local policies based on demand and local capacity. Hence implementation of the zones in municipalities that do not have adopted housing strategies will involve undertaking or completing strategic work. This can include housing capacity studies, housing strategy development, neighbourhood character assessment, and the like.

There will be a need to test the conclusions of this work with local communities and provide for public input. This consultation could be part of

a streamlined amendment process to avoid consulting twice about the same issues – once when the strategy is finalised, and again when zones and schedules are proposed.

One way to facilitate a streamlined process would be for the Minister for Planning to appoint an ongoing Standing Advisory Committee to assess local housing policy and residential zone proposals. This could provide a timely and independent review of proposals while facilitating streamlined implementation.

Councils would need to be the lead agency in implementing housing strategies, but clear time-limits, funding and guidance on the strategic work required would be needed to ensure the work is done. The Advisory Committee understands that in the metropolitan area the Housing Requirements work is undertaking tasks broadly along these lines.

### **10.3 Implementation program**

Implementation and the timely introduction of the new zones are critical to their success. The Terms of Reference require the Advisory Committee to make recommendations on the implementation of the new zones and to identify any specific matters that should be considered for the introduction of the new zones.

Some community groups raised concern about possible lengthy amendment processes for properly implemented zones that respond to housing strategies and neighbourhood character studies. These groups objected to a default zoning being applied in the transitional period, concerned that neighbourhood character would be left unprotected over that time. Some suggested the application of restrictive temporary controls via interim schedules, to be developed by the relevant council, until the amendment process to properly implement the new zones is completed.

Submitters were also concerned about the difficulty of transitioning to new zones where planning schemes have substantive local policy content relating to housing or Design and Development Overlays; and the possible complexity of phasing out duplication by way of a rushed Ministerial amendment.

The Housing Industry Association (150) is concerned about the possible impact that the varied schedules across the State could have on projects in the making, and on 'live' planning applications. They said: *'There are certain to be many developments both large and small for which substantial design and planning work has been undertaken at considerable cost ...'* They maintain that

there is a need for transitional provisions as the industry is unable to plan for the unknown changes to the controls.

Hobsons Bay (159) recalled receiving a flood of applications when the *Good Design Guide* was superseded by *ResCode*, where transitional arrangements were not put in place. This sudden volume of applications was difficult for local government to manage and they consider this situation should be avoided in the residential zones implementation.

### **Learning from the rural zones**

Regional council submitters referred to the rural zones implementation as a poor example of reform implementation, commenting that such an implementation approach should be avoided for the residential zones. The criticisms of the rural zones implementation process centred on the following issues:

- Consultation about the final form of the zones was considered to be inadequate.
- An absence of an information and awareness campaign in the lead up to implementation resulted in a lack of understanding and acceptance of the new zones by rural communities and their councils.
- The staged implementation across the state, with both zoning regimes operating at once, caused confusion and was considered disorganised.
- The Minister's ultimate deadline for implementation came unexpectedly, making councils feel disempowered and therefore triggering a negative perception that the zones were being 'forced'.
- Lack of resourcing and funding.

While some stakeholders were disappointed by the new rural zones as a planning tool, (saying that they provided a more constrained outcome in terms of achieving tourism objectives than the previous zones), they commented that the actual implementation process was most discouraging.

### **Approach to implementation**

In introducing the new zones, the Advisory Committee believes there is a choice between:

- a 'Day 1' conversion of existing zones to the new zones in all planning schemes, similar to the introduction of the New Format Planning Schemes; or
- a gradual roll out where the new zones replace the old zones on a scheme by scheme basis. The new rural zones, for example, were 'rolled-out' over a number of years.

The Advisory Committee believes that only those councils that had already done the required level of strategic research (or those councils which already had provisions in their schemes) would be in a position to apply either the Substantial Change Zone or the Limited Change Zone on 'Day 1'. The Advisory Committee understands from submissions that only about eight councils would be in position to fully implement the zones on 'Day 1'.

Other councils without that level of statutory or policy precision would inherit the Incremental Change Zone on 'Day 1' and will only be able to apply one of the new zones based on further strategic work.

The Advisory Committee recommends:

**Adopt a Day 1 neutral transition for introduction of the new residential zones in accordance with the following principles:**

- **Introduce the Incremental Change Zone to replace the Residential 1 Zone and the Residential 3 Zone in all schemes.**
- **Introduce the Substantial Change Zone to replace the Residential 2 Zone in all schemes, and in areas where councils have undertaken the appropriate strategic work that identifies areas designated for higher density residential development.**
- **Apply the Limited Change Zone only where a fully developed housing strategy has been included as part of the scheme and to areas that have identified characteristics such as heritage, environmental, landscape or other values that limit opportunities for change.**
- **Avoid the automatic application of the Limited Change Zone to:**
  - **areas within the existing Residential 3 Zone.**
  - **areas covered by the Heritage Overlay.**
  - **areas subject to single dwelling covenants.**

### **Making the implementation program work**

The Advisory Committee considers that there might be an advantage for a Standing Advisory Committee to undertake the final review of the council transition process.

In order to make the transition work and avoid the problems associated with the implementation of the rural zones, it was suggested that DPCD provide councils with a one-off grant to undertake the policy neutral transition work necessary to implement the new zones.

A possible program for implementation is set out below in Table 3.

**Table 3: Possible ‘translation and review’ program**

<b>STAGE 1: Policy Neutral Translation</b>	
<b>task</b>	<b>responsibility</b>
Release the new zones with supporting information explaining the appropriate use and application of the zones, including model schedules.	DPCD
Identify municipalities that have implemented a housing strategy in planning policy that can be translated immediately to the new zones.	DPCD
For municipalities that have implemented a housing strategy that can be translated immediately to the new zones, implement the ICZ and SCZ (as required) with individually tailored schedules: <ul style="list-style-type: none"> <li>▪ Identify areas nominated for limited change or higher density housing, develop schedules and prepare amendment documentation.</li> <li>▪ Liaise on amendment proposal.</li> </ul>	Council (with DPCD support) DPCD & Council
For municipalities that have not implemented a housing strategy (or where the strategy does not lend itself to immediate translation), implement Incremental Change Zone: <ul style="list-style-type: none"> <li>▪ Prepare draft amendment documentation, including maps.</li> <li>▪ Identification of further strategic work required / analysis of existing strategic work not yet implemented in the scheme.</li> <li>▪ Liaise on amendment proposal and proposed housing strategy work.</li> </ul>	DPCD Council DPCD & Council
VC Amendment for a translation of existing residential zones to the new residential zones. [under Section 20(4) of the Act]	DPCD
<b>STAGE 2: Policy Implementation</b>	
<b>task</b>	<b>responsibility</b>
Undertake / complete further strategic work – housing capacity studies, housing strategy development, neighbourhood character assessment etc.	Council (with DPCD support)
Streamlined amendment process to include exhibition where the housing strategy is new, but may be fast tracked where there is an existing strategy in place.	Council (with DPCD support)
Presentation of local housing policy and residential zones proposal to Standing Advisory Committee (SAC).	Council
Independent review and preparation of SAC report.	SAC
Response to SAC report and submission of final residential zones and associated policy and maps to DPCD for gazettal.	Council
Streamlined implementation of final residential zone schedules and associated policy and maps.	DPCD

The Advisory Committee recommends:

**Facilitate the Day 1 neutral translations (and later) Stage 2 neutral translations, by way of an Amendment 20(4) fast track process.**

**Provide the opportunity for Councils to undertake housing strategies and further strategic work to develop a policy base to fully implement the zones as soon as possible after ‘Day 1’.**

## **11. Principles of translation**

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### **11.1 Number of schedules**

It is clearly possible that more than one schedule to each zone is proposed. This could lead to a multitude of schedules.

Glen Eira (171), Ratio (175) and Greater Geelong (183 and 193) expressed caution that multiple neighbourhood character and design objectives would result in less certainty. VPELA (74) and The Planning Group (43) question the possibility for an excessive number of schedules.

Some councils submitted that three or four schedules would be sufficient, while others sought to apply a schedule for each neighbourhood character area as identified in their neighbourhood character studies, potentially needing multiples of schedules.

#### **Precincts should be justified**

There is only a need to have a separate precinct and schedule if there are to be different requirements. There is no need to have a separate schedule for areas that have a different character but have the same requirements applied. The Advisory Committee notes that Melbourne already has 57 schedules for its Design and Development Overlays.

The Advisory Committee concludes that the critical issue is not the number of schedules that might be applied but the strategic justification for the different schedules.

### **11.2 Applying the Limited Change Zone**

#### **Residential 3 Zone and the Limited Change Zone**

The Residential 3 Zone has been applied for a range of reasons that do not automatically justify the application of the Limited Change Zone. The Residential 3 Zone has been applied to broad areas of Melbourne and a direct translation to Limited Change Zone is not appropriate.

The Advisory Committee has already concluded that local policy and housing strategies should drive the application of the zones.

Under the new zones, application of the Incremental Change Zone with a height limit might be a better translation of the Residential 3 Zone than the Limited Change Zone depending on what local policies say.

The Advisory Committee recommends:

**Avoid the automatic application of the Limited Change Zone to areas within the Residential 3 Zone.**

### **Heritage Overlay and the Limited Change Zone**

There was also the view that not all heritage areas need to go into the Limited Change Zone. For example, it was submitted that 50 per cent of the Residential 1 Zone in Yarra is covered by a Heritage Overlay, but some of this area is also suitable for incremental change.

Existing heritage overlays will need to be retained. It is emphasised that the introduction of the new residential zones is not viewed as a watering down of overlays applied for specific purpose such as the Heritage Overlay. In this case, it may well be that some heritage areas are suitable for incremental change.

The Advisory Committee recommends:

**Avoid the automatic application of the Limited Change Zone to areas covered by the Heritage Overlay.**

## **11.3 Other zones**

### **11.3.1 Urban Growth Zone**

Several submissions highlighted that the new zones need to be developed to address growth areas concerns, saying that they should be able to be readily put in place as *applied zones* in the Urban Growth Zone.

Submitters acknowledged the unique opportunity that growth areas present due to the absence of an existing neighbourhood character and direct amenity impact obligations, giving these areas scope to achieve much greater densities than in established areas. Some submitters suggested that the Substantial Change Zone should be applied to residential areas in the Urban Growth Zone to encourage a more intense form of development of these areas from the outset of their development.

Wyndham (125) commented that they may require GAA, DPCD and other agency support:



*...in driving strategies that address developers concerns, as well as their tendencies to resist diversity in housing forms and regulate future change and dwelling sizes through private planning controls, such as covenants.*

The Advisory Committee has commented on how the zones relate to precinct structure plans that will make them suitable for use as an applied zone in the Urban Growth Zone.

### **11.3.2 Activity Centre Zone**

In the absence of an Activity Centre Zone, but in anticipation of its release, submitters questioned how the Substantial Change Zone will align with activity centre structure plans. Submissions queried whether the Substantial Change Zone would apply to areas within the activity centre boundaries and/or adjacent to the boundaries or will the Activity Centre Zone comprise residential precincts?

It was also raised that the roles of the Activity Centre Zone, Substantial Change Zone and Mixed Use Zone are unclear in terms of facilitating higher densities. Guidance is sought as to how the three zones are to be differentiated and therefore implemented to ensure a consistent approach. Submissions requested guidance on the interface between these zones, particularly regarding building heights.

The Advisory Committee cannot comment in any detail on this as the Activity Centre Zone is yet to be released and was not made available to the Advisory Committee. That said, the Advisory Committee has already commented in section 5.1 that the new residential zones are just one part of the implementation package for *Melbourne 2030*.

The Advisory Committee recommends:

**Include advice on applying the new residential zones and the Activity Centre Zone in and around the activity centres in the guidance provided with the introduction of the new zones.**

## 12. Technical and wording issues

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There were many detailed submissions about particular land uses, subdivision and buildings and works provisions, building height and the schedules.

Often these submissions highlighted the increased complexity of the new provisions; terms like 'vague', 'subjective' and 'uncertain' were used.

To many submitters, it was not clear how the zones would sit within the planning schemes as a whole, how they would relate to the SPPF and LPPF, to other residential zones and to overlays, particular and general provisions.

There was confusion about how the zones worked, about definitions and about the difference between permits for use and permits for buildings and works or other development.

A number of submissions noted errors in the drafting of the new zones as exhibited.

Submitters such as Save Our Suburbs (229) did not support the new provisions and considered them generally more complex.

In considering the submissions of technical and wording issues the Advisory Committee has applied the following principles:

- Ease of use.
- Fit with Government policy.
- Retaining elements that currently work well, but changing elements that are a current issue.
- Fit with accepted practice.
- Application of the principles of planning reform established in the VPP.
- Performance during implementation.

A full discussion of the technical issues raised is set out in Appendix C. In response to submissions requesting detailed changes the Advisory Committee has concluded:

- Listing uses in the Table of uses to communicate a policy preference for certain uses is contrary to current drafting practice and is not appropriate.
- There is no need to prohibit additional uses in the zones.

- It is not appropriate to introduce public open space requirements into the new zones.
- The revised zones provide a greater degree of flexibility and could include controls on the height of buildings in rear yards if justified.
- The interaction with the Neighbourhood Character Overlay or other overlay is clear, although it does require careful reading of the VPP.
- The ability to vary the standard for walls on boundaries is an important tool to support some forms of higher density housing and respond to local conditions.
- There is no compelling urban design or neighbourhood character reason to relate height to lot size.
- It is not appropriate to apply the Limited Change Zone simply on the basis that an area is subject to a single dwelling covenant.
- The critical issue is not the number of schedules that might be applied but the strategic justification for the different schedules.

Finally, in response to other issues raised, the Advisory Committee considers the following uses and provisions to be appropriate:

- Single dwellings in residential zones.
- Residential aged care provisions.
- The provisions allowing as-of-right Bed and breakfast, including the associated conditions.
- The controls over Hairdressers and Beauty salons.
- The limits on Animal keeping in the residential zones.
- Horse stables as a Section 3 use in the three residential zones.
- The provisions for Place of worship in the residential zones.
- The proposed third party notice and appeal provisions in relation to development.
- The proposed third party notice and appeal provisions in relation to subdivisions.
- The requirements for permits to subdivide multi unit developments.
- Exempting applications to subdivide land into lots each containing an existing dwelling or car parking space from the requirements of Clause 56.
- The provisions over outbuildings.
- Requiring a permit for dual occupancies and other development that complies with *ResCode* provisions.
- The controls over fences.

## **Part 5: Conclusions and recommendations**

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The Terms of Reference state that the Advisory Committee is to provide a final report that:

*Provides a summary of the issues raised by the submissions.*

*Recommends the appropriate form and content for the new zones.*

*Identifies any consequential changes to other provisions of the Victoria Planning Provisions that may be required as a result of the recommended residential zones.*

*Identifies any specific matters that should be considered for the introduction of the new zones.*

This section brings together the key conclusions and recommendations of the Advisory Committee.

## **13. Conclusions and recommendations**

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### **13.1 Conclusions**

The Consultation Draft for the new residential zones attracted over 230 submissions from councils, the community and industry groups. While the underpinning concept of a three-tiered zoning regime was largely supported by submitters, several key issues emerged through the submissions. The Advisory Committee considers that these concerns can be resolved through revisions to the proposed zones and by a well thought-out implementation plan.

#### **Names and purposes of the zones**

Through the identification of high, medium and low change areas, the new zones reflect an emerging approach in planning for residential development in Victoria. The Advisory Committee considers this to be the key feature of the new zones as it will provide greater clarity around the level of growth that can be expected in different areas and can be mapped as such.

However, to make this work, it is important that the zones can be differentiated at a glance through the zone purposes and that in turn, the names of the zones represent these purposes. Clear parameters need to be established on where the zones can be applied.

The Limited Change Zone is essentially about conservation; the Incremental Change Zone supports diversity and flexibility; and the Substantial Change Zone provides for higher density housing. The names and purposes recommended by the Advisory Committee reflect these intrinsic differences.

#### **Application of the zones**

The Advisory Committee sees the new Incremental Change Zone as the replacement to the Residential 1 Zone. It will be the most widely applied residential zone, facilitating diverse housing outcomes and providing flexibility to support growth, in keeping with neighbourhood character.

The Substantial Change Zone has the important role of explicitly setting out where higher density development will occur. For the zone to be successful in implementing housing policy, the Advisory Committee considers it will need to be applied more extensively than the existing Residential 2 Zone. It is the Advisory Committee's view that, by revising the Substantial Change

Zone to be more flexible and capable of being customised, it will be more widely applied.

The new Limited Change Zone will be the zone reserved for areas with special characteristics that will constrain the opportunity for growth, such as heritage, environmental, landscape and neighbourhood character. The Advisory Committee considers the Limited Change Zone should only be implemented in the context of a fully developed housing strategy for a municipality.

The Advisory Committee believes that the three new zones, together with the other existing residential zones – the Low Density Residential Zone, the Mixed Use Zone and the Township Zone, will collectively provide for greater transparency in the residential zoning regime.

The proposed Activity Centre Zone and other zones in the VPP suite will also play a major role in addressing housing requirements. Various overlays, such as the Heritage Overlay and the Design and Development Overlay will continue to serve their role in shaping our housing future, addressing functions not appropriate for the residential zones.

The three new zones form only one part of a suite of tools and strategies to respond to the State's housing demands. Policy expressed in the SPPF and the LPPF, maintains its significant role in decision making for housing, together with strategies such as *Melbourne 2030* and its counterpart *Melbourne @ 5 Million*. That is, housing policy will continue to be expressed in the SPPF or the MSS.

## **Height**

The Advisory Committee believes that the height provisions in the zones have been drafted in a way that may restrict higher density development opportunities and may inhibit positive neighbourhood character outcomes, working against government policy and good planning.

The Advisory Committee does not support mandatory height controls as the default position for the zones. The VPP has established a practical system of discretionary provisions, with mandatory requirements only being applied where the specific circumstance warrants a mandatory control, in which case a schedule can be used.

In order to be capable of implementing diverse local policy outcomes, the schedules to the new zones should each be capable of varying the preferred height control higher or lower, as required. Only the Limited Change Zone schedule should be capable of mandating a height limit.

## **Implementation**

While a range of issues were raised about the draft zones, many submissions centred on concerns about how they will be put into practice.

For the new zones to achieve their potential in responding to Victoria's housing demands, they will need to be applied in a timely fashion. It will be important for the DPCD to facilitate a streamlined and properly resourced implementation program. It is the Advisory Committee's view that introduction of the zones would ideally occur as a two-staged process whereby a neutral translation occurs on the same day for all planning schemes through a single state-wide amendment, followed by a second stage of housing policy implementation for each scheme.

The Substantial Change Zone needs to be applied more widely than the existing Residential 2 Zone, but until housing strategies are fully implemented, the Incremental Change Zone will be the default zone applied in many municipalities to locations identified for higher density housing.

In order that the zones are implemented equitably and consistently across the State in a considered manner, the Advisory Committee suggests that the Minister for Planning consider the appointment of a Standing Advisory Committee to assist in the review of each Council's final housing strategy. Appropriate funding should be provided to councils for the work necessary to implement the new zones.

## **Guidance**

The new zones will play an important role in Victoria's planning system, so it is imperative that they are properly understood by all stakeholders, particularly councils, who will be implementing their housing policies using the zones. For the implementation to occur in a streamlined manner, the Advisory Committee believes that the new zones should be supported by guidance material; and that this material should be released at the same time as the new zones. The information could include:

- An Advisory Note on the transitional process and the implementation plan.
- A Practice Note explaining the appropriate use and application of the zones.
- A Ministerial Direction for the;
  - Substantial Change Zone, specifying when a height lower than 4 storeys is justified.
  - Limited Change Zone, when a mandatory height limit is justified.

- Material to assist the general public understand the role of the zones and their proposed implementation.

The Advisory Committee is confident that a revised version of the proposed zones, with the technical changes and refinements recommended in this report, will provide an improved tool for councils to achieve their housing policy objectives. The new zones will then settle the long-standing issue of the apparent mismatch between the policy framework and the implementation package of zones and overlays identified in the *Making Local Policy Stronger* report. The inclusion of clear and distinct zone 'purposes' is critical to achieving this aim.

The new residential zones will assist in responding to the diverse and changing housing needs of Victoria and lead to better planning outcomes.

## 13.2 Recommendations

The Advisory Committee has made a number of recommendations in relation to the proposed zones, and these are found throughout the body of the report, and in Appendix C. For ease of reference, these recommendations have been grouped together as below, and the section of the report in which they are discussed is noted in brackets.

### 13.2.1 Form and content of new zones

In relation to the appropriate form and content for the new zones the Advisory Committee recommends:

1. **Adopt the new Residential Zones as contained in Appendix D to this report (see section 1.4).**

This is the primary recommendation of the Advisory Committee, and in making this recommendation, the Advisory Committee raises a number of issues common to all the zones and highlights the following specific changes:

- 1.1 Re-name the Zones to better reflect the overall purposes of each as follows:
  - Residential 1 – Residential Diversity Zone (7.5)
  - Residential 2 – Higher Density Zone (7.6)
  - Residential 3 – Limited Change Zone (7.7)
- 1.2 Make the height limits discretionary (that is, require a permit to exceed the default height in the zone or modified height in the schedule), unless later strategic work results in a deliberate decision to apply a



mandatory limit in the Limited Change Zone or in an overlay which can be strategically justified (8.2).

- 1.3 Refer to the heights in all zones in metres only (C7.1).
- 1.4 Amend the height provisions so they only apply to dwellings or residential buildings (C7.3).
- 1.5 Exempt architectural features, building services and infrastructure equipment from the height controls (C7.2).
- 1.6 Ensure any height control in an approved development plan, Incorporated Plan, precinct structure plan or overlay takes precedence over the height limit in a zone or schedule (C7.6).
- 1.7 Include the ability of the zones to:
  - Introduce transitional heights in the new zones in the schedules where they are justified (C7.4).
  - Vary landscaping standards, including provision for canopy trees (C6.6).
  - Vary the permeability standard (C6.8).
  - Vary standards by location and development context in the schedules (C6.3).
- 1.8 Make the following technical changes:
  - Remove redundant land use terms from the Tables of uses (C2.1).
  - Change Clause 1.0 of the schedules to each zone to refer to 'area' rather than 'precinct' for consistency (C6.1).
  - Delete the application requirements and decision guidelines relating to Buildings and works associated with a Section 2 use from the Limited Change Zone (C8.3).

It should be noted that the above list does not detail all of the subtle changes to the proposed new zones as recommended by the Advisory Committee. The complete zones and schedules in Appendix D contain the full detail of the primary recommendation.

**2. Adopt the Substantial Change Zone as provided in Appendix D (1.4), incorporating the following key modifications:**

- 2.1 Modify the Substantial Change Zone so that it can be applied to all areas that councils have identified as suitable for higher density development (6.1).
- 2.2 Change the purposes of the Substantial Change Zone to read:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework.
  - To deliver housing at higher densities.
  - To manage development to achieve design objectives and built form outcomes specified in a schedule to this zone.
  - In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs (7.6).
- 2.3 Amend the schedule of the Substantial Change Zone so that it is possible to vary:
- the preferred height control higher or lower as required (8.3.1).
  - the private open space standard higher or lower (C6.6)
- 2.4 Vary the Table of uses to:
- Correct the use of Office in the Table of uses to the Substantial Change Zone to exclude other permitted uses such as Medical centre (C2.5).
  - Include a condition so that Office is permitted in the Substantial Change Zone if located on the ground floor of a multi-level building where the upper levels are used for accommodation (C2.5).
  - Remove the condition that a Convenience restaurant and Take away food premises must adjoin, or have access to a road in a Road Zone in the Substantial Change Zone (C2.8).
  - Delete the condition '*The leasable floor area must not exceed 80 square metres*' adjacent to Convenience shop in the table to Clause 32.02-2 in the Substantial Change (C2.10).
- 2.5 Include zone interface as a consideration in the decision guidelines of the Substantial Change Zone (C7.4).
- 2.6 Make design objectives and built form outcomes optional in the schedule to the Substantial Change Zone (7.6).
- 3. Adopt the Incremental Change Zone as provided in Appendix D (1.4), incorporating the following key modifications:**
- 3.1 Change the purposes of the Incremental Change Zone to read:
- To implement the State Planning Policy Framework and the Local Planning Policy Framework.
  - To provide for a diversity of residential development at a range of densities with a variety of dwelling types.

- To encourage development that respects the neighbourhood character.
  - To manage development to achieve neighbourhood character and design objectives specified in a schedule to this zone.
  - In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs (7.5).
- 4. Adopt the Limited Change Zone as provided in Appendix D (1.4), incorporating the following key modifications:**
- 4.1 Change the purposes of the Limited Change Zone to read:
- To implement the State Planning Policy Framework and the Local Planning Policy Framework.
  - To identify areas where there are limited opportunities for change due to identified characteristics such as heritage, environmental, landscape or other special values.
  - To manage development to achieve neighbourhood character and design objectives specified in a schedule to this zone.
  - In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs (7.7).
- 4.2 Amend the schedule of the Limited Change Zone so that it is possible to vary the height control higher as required (or apply a mandatory height control) (8.3.2).
- 4.3 Delete the ability to:
- Specify a minimum lot size (9.1).
  - Specify a limit on the number of dwellings (9.2).
- 4.4 Amend the Table to:
- Delete the condition '*The site must adjoin, or have access to, a road in a Road Zone*' adjacent to Food and drink premises in the table to the Clause 32.01-2 in the Limited Change Zone (C2.9).
  - Delete the condition '*The site must adjoin, or have access to, a road in a Road Zone*' adjacent to Convenience shop in the table to Clause 32.01-2 in the Limited Change Zone (C2.10).
- 4.5 Apply the Limited Change Zone only to areas where there are limited opportunities for change due to identified characteristics such as heritage, environmental, landscape or other values (6.3).

- 4.6 Delete the Application Requirements and Decision Guidelines relating to Use of land from the Limited Change Zone (C2.3).

### **13.2.2 Consequential changes to other provisions of the VPP**

#### **5. Make the following consequential changes to other provisions of the Victoria Planning Provisions:**

- 5.1 Review the Mixed Use Zone, Township Zone and Low Density Residential Zone to provide for the same type of schedule that will be possible under the new zones (5.4).
- 5.2 Review the Low Density Residential Zone to provide for flexibility over minimum lot size (5.4).
- 5.3 Develop a new clause in the Particular Provisions which lists the uses (with conditions) that are standard for the new residential zones (C2.2).
- 5.4 Develop a new Clause in Particular Provisions to address '*Non-residential uses in the residential zones*', and provide a schedule to the new clause to allow local requirements for specific uses to be inserted by council (C2.3).
- 5.5 Review Clause 63 (Existing use rights) to clarify the status of existing multi-unit development that was developed prior to the introduction of the Good Design Guide (C8.2).

### **13.2.3 Introduction of the new zones**

#### **6. Adopt a Day 1 neutral transition for introduction of the new residential zones (10.3) as follows:**

- 6.1 Introduce the Incremental Change Zone to replace the Residential 1 Zone and the Residential 3 Zone in all schemes (10.3).
- 6.2 Introduce the Substantial Change Zone to replace the Residential 2 Zone in all schemes, and in areas where councils have undertaken the appropriate strategic work that identifies areas designated for higher density residential development (6.1 and 10.3).
- 6.3 Apply the Limited Change Zone only where a fully developed housing strategy has been included as part of the scheme and to areas that have identified characteristics such as heritage, environmental, landscape or other values that limit opportunities for change (10.3).
- 6.4 Avoid the automatic application of the Limited Change Zone to:

- areas within the existing Residential 3 Zone (10.3 and 11.3);
  - covered by the Heritage Overlay (10.3);
  - areas subject to single dwelling covenants (10.3).
- 6.5 Introduce transitional arrangements for development captured by the new requirements for a permit to exceed the new discretionary height limit (8.2).
- 6.6 Facilitate the Day 1 neutral translations (and later) Stage 2 neutral translations, by way of an Amendment 20(4) fast track process (10.3).
- 6.7 Provide the opportunity for councils to undertake housing strategies and further strategic work to develop a policy base to fully implement the zones as soon as possible after 'Day 1' (10.3).
- 7. Provide advice and guidance to Councils on implementation of the new zones as follows:**
- 7.1 Prepare a Ministerial Direction on the application of height controls in the zones including:
- When a height lower than the equivalent of 4 storeys is justified in a Substantial Change Zone.
  - The use of a mandatory height limit in the Limited Change Zone (8.2).
- 7.2 Prepare and release guidance material at the same time as the new zones are announced (10.1).
- 7.3 Include advice on applying the new residential zones and the Activity Centre Zone in and around the activity centres in the guidance provided with the introduction of the new zones (11.3.2).

## **A Terms of Reference**

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### **TERMS OF REFERENCE**

**Advisory Committee appointed pursuant to Part 7, Section 151 of the  
Planning and Environment Act 1987 to report on issues concerning**

### **NEW RESIDENTIAL ZONES FOR VICTORIA**

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#### **1. Purpose**

The purpose of the Advisory Committee is to review draft new residential zones to replace the existing Residential 1, Residential 2 and Residential 3 Zone. The review will make recommendations on the:

- a) Form, content and operation of the new zones and accompanying schedules.
- b) Implementation of the new zones.

#### **2. Background**

Recommendation 1 of the *Making local policy stronger* report of June 2007 recommended that more certainty in planning be provided by making it easier to implement policy through planning controls. In particular, that more opportunity be provided to express state and local policy outcomes through zones, overlays and particular provisions. As a priority, the residential zones and associated provisions are to be reviewed first.

The Government accepted this recommendation (*The Government's five point priority action plan, October 2007*) and committed to introduce new residential zones that better implement housing strategies.

In February 2008, the Government released a discussion paper outlining proposals for new residential zones. The discussion paper outlined a broad structure for three new residential zones that provided for substantial, incremental and limited change.

The new zones are intended to more directly reflect the objectives of State and local planning policies for housing, and provide better tools for councils

to manage the diverse and changing housing needs of their communities than are provided by the current Residential 1 Zone, Residential 2 Zone and Residential 3 Zone.

Feedback to the discussion paper informed the preparation of the detailed draft zone provisions that were released for further public consultation between February 2009 and 9 April 2009.

### **3. The draft zone provisions**

The draft zone provisions have been designed to better implement housing strategies by:

- Providing more certainty for the community, the development industry and decision makers about the type of residential development expected in each new residential zone.
- Seeking to accommodate a range of related strategic housing objectives, such as higher density residential development and protection of neighbourhood character, heritage and conservation of the natural environment.
- Providing a greater level of local responsiveness through the proposed local schedules in each zone.
- Providing opportunities for streamlining the planning process for specified types of residential development without unduly limiting the ability for local communities to contribute to the planning of their neighbourhoods.

### **4. Task**

The Advisory Committee, appointed pursuant to Part 7 of the *Planning and Environment Act 1987*, will:

- a) Consider all submissions to the draft zone provisions.
- b) Hold public hearings of submitters to consider and clarify issues raised in the written submissions, if required; and
- c) Make recommendations on the final form, content and operation of the draft zone provisions.

## **5. Procedure**

The review of the draft new residential zones will be carried out in two stages:

**Stage 1:** Review of submissions and conduct of public hearings by the Advisory Committee to give submitters to the February 2009 draft zone proposals the opportunity to present the issues raised in their written submissions.

**Stage 2:** Preparation of a final report recommending proposed new residential zones suitable for inclusion in all Victorian planning schemes.

## **6. Conduct of hearings**

A quorum is not required for the Advisory Committee to conduct public hearings or undertake its work.

Submitters who indicated that they wish to be heard by the Advisory Committee will be invited to expand on their submission and make a presentation to the Advisory Committee.

It is expected that the hearings will be conducted in Melbourne and regional Victoria, and that submitters will present without the need for legal representation or evidence.

The Advisory Committee will establish time limits for all presentations.

## **7. Required Output**

The Advisory Committee is to provide a final report that:

- a) Provides a summary of the issues raised by the submissions.
- b) Recommends the appropriate form and content for the new zones.
- c) Identifies any consequential changes to other provisions of the Victoria Planning Provisions that may be required as a result of the recommended residential zones.
- d) Identifies any specific matters that should be considered for the introduction of the new zones.

## **8. Timing**

The Advisory Committee is to provide a written report to the Minister for Planning by 21 August 2009, unless an extension is agreed to by the Minister.



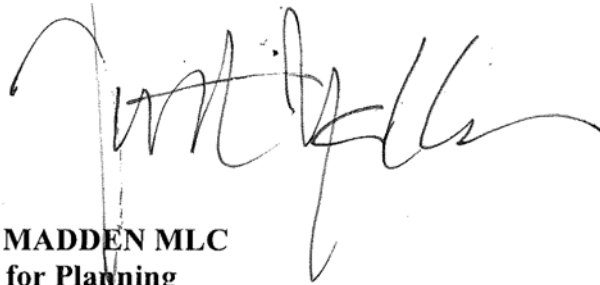
**9. Fee**

The fee for the Advisory Committee will be set at the current rates for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.

**10. DPCD contact**

The DPCD contact is:

Jim Papadimitriou, Senior Policy Officer  
Statutory Planning Systems Reform  
Phone: 9637 9542  
Email: jim.papadimitriou@dpcd.vic.gov.au

A handwritten signature in black ink, appearing to read 'Justin Madden', is written over a vertical line.

**JUSTIN MADDEN MLC**  
**Minister for Planning**

Date:

## B Submitters and parties

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### Submitters

235 submissions were referred to the Advisory Committee. Submissions were received from a range of stakeholders, including councils, community groups, peak industry bodies and private individuals. The submitters are listed in order of submission number below.

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| 1. KL & V Dowd                                     | 28. Ararat Rural City                       |
| 2. Coldstream Timber                               | 29. Wellington Shire Council                |
| 3. Jonathan Breedon                                | 30. Bayside City Council                    |
| 4. Alesci Developments                             | 31. Nillumbik Ratepayers Association        |
| 5. Mathew Knight                                   | 32. VicRoads                                |
| 6. Neale Burgess MP                                | 33. Mark Russell                            |
| 7. Patricia Weller                                 | 34. Manningham City Council                 |
| 8. Howard Patterson                                | 35. Nicholas Brown                          |
| 9. Mordialloc Beaumaris Conservation League        | 36. Renee Head                              |
| 10. Joe Lenzo                                      | 37. Don Glasson                             |
| 11. Graeme Hauser                                  | 38. City of Kingston                        |
| 12. Keith Nation                                   | 39. Colac Otway Shire                       |
| 13. Peter Holloway                                 | 40. South Gippsland Shire Council           |
| 14. Association of Consulting Surveyors (Victoria) | 41. Mt Eliza Woodland Residents Association |
| 15. Lynda Whitaker                                 | 42. City of Greater Bendigo                 |
| 16. Banyule City Council                           | 43. The Planning Group                      |
| 17. Wangaratta City Council                        | 44. City of Monash                          |
| 18. Port Campbell Community Group                  | 45. Derek Butler                            |
| 19. Indigo Shire Council                           | 46. Terry O'Shea                            |
| 20. Peter Heath & Mrs Diane Redman-Heath           | 47. Judith De Closey                        |
| 21. Allan Harris                                   | 48. Thomas & George Pty Ltd                 |
| 22. Jennie Evans                                   | 49. Anthony & Lynette Meagher               |
| 23. June Halls                                     | 50. Leonard Murphy                          |
| 24. Ed Neff  | 51. David Stabb                             |
| 25. Allan Tully                                    | 52. Alison Pollock                          |
| 26. Mount Eliza Action Group                       | 53. Broadmeadows Progress Association       |
| 27. Ronald & Olwyn Syle                            | 54. Glenda Morellato                        |
|  | 55. Beaumaris Conservation Society          |
|  | 56. Marie Harrod                            |

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| 57. Keeping Manningham a Quality Place to Live In        | Group   |
| 58. Grace Millar   | 92. Kilmore Integrity Kept  |
| 59. Building Designers Association Victoria              | 93. Howard & Teresa Rowlston  |
| 60. Urban Development Institute of Australia (Victoria)  | 94. City of Greater Dandenong   |
| 61. Jenelle Curtin                                       | 95. Tract Consultants   |
| 62. Margot Breidahl                                      | 96. William Orange  |
| 63. Queenscliffe Community Association                   | 97. Adjungbilly   |
| 64. M McCulkin   | 98. Sheryl O'Donnell  |
| 65. M Wilson   | 99. City of Casey   |
| 66. E Stone & SM Branwhite                               | 100. Stockland Corporation  |
| 67. Lawrence Mobsby                                      | 101. Jenny Norvick  |
| 68. Julie-Anne Filer                                     | 102. Shire of Melton  |
| 69. Peter Filer  | 103. Belmont Heights Estate Resident Group  |
| 70. Kane Filer   | 104. Macedon Ranges Residents Association   |
| 71. Kevin Paten  | 105. David Ingram   |
| 72. Darebin Appropriate Development Association          | 106. Geoff Peverall   |
| 73. Sheila Sheehan                                       | 107. Dennis O'Connell   |
| 74. Victorian Planning and Environmental Law Association | 108. Susan Murray   |
| 75. Heritage Council of Victoria                         | 109. Mitcham Residents Association Incorporated   |
| 76. Malvern East Group                                   | 110. Carlton Gardens Group  |
| 77. Planning Backlash                                    | 111. Brimbank City Council  |
| 78. Surf Coast Shire                                     | 112. Irene Fullarton  |
| 79. Mornington Peninsula Shire                           | 113. David Lock Associates  |
| 80. Fred, Valmai & David Cox                             | 114. Hungry Jack's  |
| 81. Burnley Golden Square Residents Group                | 115. Glen Eira Residents Association  |
| 82. Edward & Shirley Southcombe                          | 116. Heart Foundation   |
| 83. Towong Shire Council                                 | 117. Graham Jolly   |
| 84. Joan Hunter  | 118. Cardinia Shire Council   |
| 85. Betty Hayes  | 119. Collie Pty Ltd   |
| 86. TB Kelly   | 120. Mornington Peninsula Ratepayer's & Residents' Association                            |
| 87. Kelly  | 121. Greater Shepparton City Council  |
| 88. Krammed Residents Association                        | 122. Frankston City Council   |
| 89. Wandong-Heathcote Junction Community Group           | 123. Moonee Valley City Council   |
| 90. Warrandyte Community Association                     | 124. Ken Duxbury  |
| 91. Toorak Village Residents Action                      | 125. Wyndham City Council   |
|  | 126. Davis Langdon (on behalf of Department of Education and Early Childhood Development) |

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| 127. City of Stonnington   | 163. David Sheehan   |
| 128. Mornington Peninsula Shire  | 164. Golf Environment Protection<br>Incorporated                       |
| 129. Eastern Golf Club - c/o Urbis Pty Ltd   | 165. Gwen Whitlock   |
| 130. Bruce & Glenda Seabrook   | 166. City of Maribyrnong   |
| 131. City of Ballarat  | 167. DR Mentiplay  |
| 132. Villawood Properties  | 168. Tim Macpherson Smith & Carolynne<br>Spooner                       |
| 133. Melbourne Water   | 169. <i>Confidential</i>   |
| 134. Bass Coast Shire Council  | 170. 100 Waverley Road Action Group                                    |
| 135. Corangamite Shire Council   | 171. Glen Eira City Council  |
| 136. Ban Wee   | 172. Toorak Village Residents Action<br>Group                          |
| 137. Eaglemont Neighbourhood<br>Conservation, Griffin Eaglemont<br>Heritage & Outlook Park Residents<br>Associations | 173. Stormwater Victoria (Stormwater<br>Industry Association Victoria) |
| 138. Macedon Ranges Shire Council  | 174. City of Melbourne   |
| 139. Gannawarra Shire Council  | 175. Ratio Consultants   |
| 140. Urbis Pty Ltd   | 176. Carlton Residents Association                                     |
| 141. Cardinia Ratepayers & Residents<br>Association  | 177. Kilmore Integrity Kept  |
| 142. Nillumbik Shire Council   | 178. Elaine Shields  |
| 143. McDonald's Australia Limited  | 179. Ian & Maree Simpson   |
| 144. Brian & Mrs Nina Earl   | 180. Bendigo & District Environment<br>Council                         |
| 145. Vivienne Tate   | 181. Roberts Day   |
| 146. Bright & District Ratepayers<br>Association   | 182. Hume City council   |
| 147. Broadmeadows Progress Association   | 183. City of Greater Geelong   |
| 148. Rowan Harrison  | 184. Peate Avenue Residents  |
| 149. Property Council of Australia   | 185. Banyule City Council  |
| 150. Housing Industry Association  | 186. Whitehorse City Council   |
| 151. Maroondah City Council  | 187. Community Housing Federation of<br>Victoria                       |
| 152. Michael Wollin  | 188. Chris Blackwood   |
| 153. Brandon Park Residents Action<br>Group  | 189. Knox City Council   |
| 154. Centrum Town Planning   | 190. Mount Alexander Shire Council                                     |
| 155. Hansen Partnership  | 191. Collingwood & Abbotsford Residents<br>Association                 |
| 156. Phillip Island Conservation Society   | 192. Borough of Queenscliffe   |
| 157. Moreland City Council   | 193. Design 79 Building & Pool<br>Consultants                          |
| 158. MacroPlan Australia   | 194. Moreland City Council   |
| 159. Hobsons Bay City Council  | 195. City of Port Phillip  |
| 160. David Rayson  | 196. Breese Pitt Dixon   |
| 161. Trevor Bergman  |  |
| 162. Kris Hansen   |  |

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| 197. Shire of Yarra Ranges             | 218. Argot Consultants                                    |
| 198. Aaron Dyer                        | 219. Blue Print Drafting                                  |
| 199. Barry Gilbert                     | 220. City of Yarra  |
| 200. Christina Rennick                 | 221. City of Whittlesea                                   |
| 201. David Goodwin & Co. Town Planners | 222. Horsham Rural City Council                           |
| 202. Jan Bruce                         | 223. City of Melbourne                                    |
| 203. Janine Halls                      | 224. Philip W Rechter                                     |
| 204. Whitehorse City Council           | 225. Williamstown Newport Spotswood Residents Association |
| 205. Trevor White                      | 226. Elizabeth Russell                                    |
| 206. Leon Yaroslavsky                  | 227. Christine Arnold                                     |
| 207. Josephine McLean                  | 228. Don Arnold   |
| 208. Mal Logan                         | 229. Save Our Suburbs                                     |
| 209. Margaret Wohlers - Scarff         | 230. J Plier-Malone                                       |
| 210. GHD                               | 231. Inner South Metropolitan Mayors Forum                |
| 211. Paul Volich                       | 232. Boroondara Residents Action Group                    |
| 212. Save Carnegie Action Group        | 233. West of Elgar Residents Association                  |
| 213. Rita Bottomley                    | 234. Boroondara City Council                              |
| 214. Robert Gray                       | 235. Environmental Defenders Officer                      |
| 215. Stephen Leitch                    | 236. Municipal Association of Victoria                    |
| 216. Suzanne McHale                    |   |
| 217. Gardiner's Creek Community Group  |   |

Note: Submitter no. 169 has requested that their personal details not be published. The submission is marked as 'confidential' in the list above.

## Parties to the hearing

Over 60 submitters were listed to be heard, some of whom did not appear. Submitters that were heard by the Advisory Committee are listed below:

- Manningham City Council – Fiona Ryan (34)
- Urban Development Institute of Australia – Tony De Domenico (60)
- Malvern East Group – Ann Reid (76)
- Mordialloc Beaumaris Conservation League – Mary Rimington (9)
- Graeme Hauser (11)
- Peter Holloway (13)
- Planning Backlash – Mary Drost (77)
- Lawrence Mobsby (67)
- Cardinia Shire Council – Tracy Parker (118)
- Julie Filer (68)
- West of Elgar Resident's Association - Geoff White (233)
- Maribyrnong City Council – Katie McMahon & Jules Griffith (166)
- Eastern Golf Club c/o Urbis Pty Ltd (129)
- Urbis Pty Ltd – Rebecca West (140)
- Macedon Ranges Shire Council – Suzannah Bigolin (138)
- City of Greater Bendigo – Emma Bryant (42)
- Whitehorse City Council – Gerard Gilfedder (186)
- Housing Industry Association – Fiona Nield (150)
- Stormwater Victoria – Andrew Allan and Ros Dann (173)
- Carlton Residents Association – Ian Bird (176)
- David Goodwin (201)
- Josephine McLean (207)
- Warrandyte Community Association – Valerie Polley (90)
- VPELA – Jamie Govenlock (74)
- Knox City Council – Cathy Philo (189)
- Yarra City Council – Vivien Williamson (220)
- MacroPlan Australia – Brian Haratsis (158)
- City of Melbourne – Robyn Hellman (223)
- Macedon Ranges Residents Association – Christine Pruneau (104)
- Nillumbik Shire Council – Chad Griffiths (142)
- Bass Coast Shire – Angelo D'Costa (134)
- Nicholas Brown (35)
- Elizabeth Russell (226)
- Broadmeadows Progress Association – Brian Harding (53)
- Broadmeadows Progress Association – John and Sonja Rutherford (147)

- Ken Duxbury (124)
- Beaumaris Conservation Society – Chris Sutton (55)
- David Rayson c/o Frank Dawson (160)
- Don Glasson (37)
- Rowan Harrison (148)
- Eaglemont Neighbourhood Conservation Assoc. – Gurli Anker Hughes (137)
- Adjungbilly – Mala Freeman, Gila Schapp & Esther Caspi (97)
- City of Kingston – Jonathan Guttmann (38)
- City of Boroondara – Shiranthi Widan (234)
- Golf Environment Preservation Inc. c/o Environmental Defenders Office (164/235)
- Corangamite Shire Council – Michelle Granger (135)
- Edward Southcombe (82)
- Queenscliffe Community Association – Chris Johnson (63)

## **C Technical and wording issues**

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This Appendix discusses the detailed submissions made in relation to the more technical and wording issues of the zones. The principles that the Advisory Committee has applied in considering these issues are listed in section 12 together with conclusions on matters where the Advisory Committee did not recommend a change.

Specific recommendations emanating from this analysis are included in the Recommendations as part of section 13.

This Appendix discusses issues under the following headings

- Purposes
  - C1.1 Should all development achieve character purpose?
- Tables of uses
  - C2.1 Giving preference to certain uses
  - C2.2 Unnecessary inclusions in the Tables of uses
  - C2.3 Non-residential uses in the residential zones
  - C2.4 Prohibiting of uses
  - C2.5 Office in the Substantial Change Zone
  - C2.6 Residential aged care facilities
  - C2.7 Bed and breakfast
  - C2.8 Convenience restaurant
  - C2.9 Food and drink premises in the Limited Change Zone
  - C2.10 Convenience shop
  - C2.11 Hairdressers and Beauty salons
  - C2.12 Limit on the number of animals that can be kept
  - C2.13 Horse stables
  - C2.14 Place of worship
- Notice and review
  - C3.1 Third party notice and review rights for development
  - C3.2 Subdivision of existing development
- Subdivision
  - C4.1 Need for subdivision permit for approved residential developments.
  - C4.2 Meeting Clause 56 requirements



- C4.3 Lot size averaging
- C4.4 Consolidation requirement in the Substantial Change Zone
- C4.5 Public open space contributions
  
- Dwellings
  - C5.1 Permits for single dwellings
  - C5.2 Underdevelopment in the Substantial Change Zone
  - C5.3 Outbuildings and works normal to a dwelling
  - C5.4 Permit exemptions for *ResCode* compliant development
  - C5.5 Double storey development in rear yards
  - C5.6 Permit or dispensation process for high front fences
  
- The schedules
  - C6.1 'Area' or 'Precinct'
  - C6.2 Relationship between the Neighbourhood Character Overlay and the zones
  - C6.3 Variation of Clause 54 and 55 standards by locations
  - C6.4 Walls on boundaries
  - C6.5 Car parking
  - C6.6 Private open space and landscaping
  - C6.7 Tree Protection
  - C6.8 Permeability
  
- Height
  - C7.1 Metres or storeys?
  - C7.2 Should there be height exemptions?
  - C7.3 Application of height controls to non-residential land uses
  - C7.4 Interface and transition considerations
  - C7.5 Relating height to lot size
  - C7.6 Height exemptions for DPOs and PSPs
  
- Other issues
  - C8.1 Relationship to covenants
  - C8.2 Existing use rights
  - C8.3 Application requirements and decision guidelines

## C1. Purposes

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The purposes of the zones attracted a large number of submissions. The purposes of the zones is discussed in section 7; this section discusses more detailed wording issues.

### C1.1 Should all development achieve character purpose?

#### What is the issue?

Concerns were raised whether all development should achieve the neighbourhood character and design objectives or just residential development.

It was submitted that use and subdivision should meet the neighbourhood character and design objectives.

#### What do the zones say?

The three new zones include the purpose:

*To manage residential development to achieve neighbourhood character and design objectives specified in a schedule to this zone.*

The three zones also include new decision guidelines for 'Subdivision', 'Construction and extension of one dwelling on a lot', 'Construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings' and for 'Building and works associated with a Section 2 use' as follows:

*Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:*

- *The neighbourhood character and design objectives specified in a schedule to this zone.*

The Limited Change Zone also includes the above decision guideline for 'Use of land' applications.

#### Submissions

Banyule (16) submitted that the zones should provide:

*A development must meet the neighbourhood character and design objectives specified in a schedule to this zone.*

Ararat (28) submitted that neighbourhood character and design objectives should be considered for all section 2 uses in each zone.

Patterson (8) submitted that subdivisions should not have to meet neighbourhood character and design objectives.

### **Discussion**

There is a seeming mismatch in the zones where the purposes do not explicitly state that non-residential development is to achieve the identified neighbourhood character and design objectives, but non-residential development is subject to the same height controls as residential development.

The Advisory Committee considers that all development in the zone should achieve the character and/or design and built form objectives in the new zones.

The Advisory Committee has amended the purposes of the zones to reflect that all development is managed so that it achieves neighbourhood character and design objectives specified in a schedule to the zone.

## **C2. Tables of uses**

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A number of submissions raised matters pertaining to the tables of uses in the proposed new zones and the manner in which applications for use are made and assessed.

### **C2.1 Giving preference to certain uses**

#### **What is the issue?**

It was submitted that the zones should indicate preferred Section 2 (permit required) uses.

#### **What do the zones say?**

Land use definitions in the VPP are 'nested' with some more specific uses included in broader land use terms. Tables of uses in zones in the VPP list only the land use terms that are required to interpret the scheme. Some land uses must be specified in Section 2 because the broader land use term in which they are nested is prohibited. For example, 'office' is prohibited and so 'medical centre', which is nested in 'office', must be listed in Section 2 to make the use discretionary.

The Advisory Committee notes that some uses are in fact listed in some of the zones when they need not be (see food and drink premises in the Limited Change Zone). However this appears to be an error as a result of the complexities of drafting and not a deliberate shift to a new approach.

#### **Submissions**

A number of councils submitted that preferred Section 2 uses should be specified or alternatively that no uses should be specified.

Patterson (8) questioned the logic of listing uses in Section 2 that have no preconditions, stating that if a use is not prohibited, it can be applied for anyway.

#### **Discussion**

Historically in planning schemes some uses were listed and some were not, with the inference being that listed uses had greater policy support. This is

not the approach taken in the VPP with uses only listed when they need to be.

The Advisory Committee considers that to change the current approach to the tables of uses would require a change to the whole format of the VPP zones and is unnecessary given the intent of the VPP to rely on explicit policy statements.

The Advisory Committee concludes:

**Listing uses in the Tables of uses to communicate a policy preference for certain uses is contrary to current drafting practice and is not appropriate.**

The Advisory Committee recommends:

**Remove redundant land use terms from the Tables of uses.**

## **C2.2 Unnecessary inclusions in the Table of uses**

### **What is the issue?**

Is there a need to include activities in the tables of uses that are never likely to occur within a residential area (mining etc.)?

### **What do the Zones say?**

All three new zones comply with the VPP practice of including the following uses in either Section 1 or Section 2:

- Apiculture
- Carnival
- Circus
- Informal outdoor recreation
- Mineral exploration
- Mining
- Minor utility installation
- Natural systems
- Railway
- Road
- Search for stone
- Tramway

## Submissions

A number of submitters felt that the new zones provided an ideal opportunity to rationalise the above uses into a standard clause (in the Particular Provisions) rather than to clutter up the zones with unnecessary uses.

## Discussion

Non-residential uses such as Mineral exploration, Agriculture, Utility installation are required to be Section 1 uses in zones through other legislation. Mineral exploration is specifically referenced in the SPPF at Clause 17.08-2, which states that:

*planning schemes must not prohibit or require approval for mineral exploration.*

The Advisory Committee understands that the new residential zones comply with the VPP drafting practice, but that is not really the point. These new zones are the first real attempt to review the twelve year old VPP model and the Advisory Committee understands the frustrations of stakeholders who have had the true intent of the zone table clouded by unnecessary (and unlikely) activities.

The Advisory Committee recommends:

**Develop a new clause in the Particular or General Provisions which lists the uses (with conditions) that are standard for the residential zones.**

## C2.3 Non-residential uses in the residential zones

### What is the issue?

The new (and the existing) suite of residential zones allow many 'non-residential' uses, subject to a permit. The Limited Change Zone has guidelines for permit applications for uses; the other zones do not.

### What do the zones say?

The Limited Change Zone includes:

*32.06-3 Use of land  
Application requirements*

*An application to use land must be accompanied by the following information, as appropriate:*

- *The purpose of the use and the types of activities which will be carried out.*
- *The likely effects, if any, on adjoining land, including noise levels, traffic, the hours of delivery and despatch of goods and materials, hours of operation and light spill, solar access and glare.*

#### *Decision guidelines*

*Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:*

- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *The neighbourhood character and design objectives specified in a schedule to this zone.*
- *The impact of the use on the amenity of existing dwellings and the surrounding area.*
- *The effect of traffic to be generated on roads.*

Existing zones do not have any guidelines for uses in residential zones, though a number of schemes have a 'non-residential uses in residential zones' Local Planning Policy.

### **Submissions**

Melbourne (223) submitted that the inclusion of similar provisions in the Incremental Change Zone and Substantial Change Zone would allow the possible removal of policies pertaining to discretionary uses.

This was supported by several other submitters including the Beaumaris Conservation Society (55), Surf Coast (78), and Greater Dandenong (94). See also the submissions from Macedon Ranges Residents Association (104), Centrum Town Planning (154), Greater Geelong (183) and the Inner South Metropolitan Mayors Forum (231).

### **Discussion**

All three exhibited residential zones contain the following purpose:

*In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.*

This purpose is reflected in the Table of uses where the following non-residential uses (among others) require a planning permit:

- Car wash
- Community market
- Convenience restaurant
- Convenience shop
- Food and drink premises
- Medical centre
- Place of assembly
- Place of worship
- Plant nursery
- Service station

(It is noted that many of these uses must comply with specified conditions).

Neither the existing nor the new zones provide guidance to the decision maker on how these applications are to be assessed. Notably, only the Limited Change Zone has any direction for consideration of any 'Use' application.

In the absence of any guidance, many Councils have prepared a local policy at Clause 22 of the scheme which addresses 'Non-residential uses in the residential zone'. There is considerable repetition in all of these policies which prompted the *'Making Local Policy Stronger'* review to suggest that these policies could be rationalised into the one clause which could reside as a Particular Provision at Clause 52.

Typically, such local policies have contained objectives addressing threshold issues such as:

- To allow complementary non-residential uses to be integrated into residential areas.
- To ensure that non-residential uses are appropriately located having regard to:
  - The intensity and hours of operation of the proposed activity.
  - The siting and design of proposed buildings and works, including car parking areas, advertising signs and telecommunication facilities.
  - The location of access points.
- To ensure that the appearance and scale of development is consistent with nearby housing.



- To reduce the potential adverse impacts on the amenity of residential properties.
- To avoid the development of *defacto* commercial strips along main roads in residential areas and the oversupply or duplication of commercial premises.

Some policies contain detailed provisions relating to various uses such as medical centres, child care facilities, petrol stations and places of worship.

Some policies have also contained detailed application requirements, decision guidelines and reference documents.

The Advisory Committee is conscious of the current DPCD thinking about rationalising Clauses 21 and 22 into the one clause. The Advisory Committee considers that the absorption of a recurrent local policy across the state into Clause 52 would help reduce the bulk of local policy and would avoid repetition.

The Advisory Committee therefore supports, in principle, the development of a stand alone 'Particular Provision' that contains objectives, decision guidelines, and possibly application requirements for non-residential uses in the residential zones. However, the Advisory Committee acknowledges that different Councils have different pressures for certain uses and that some will have different requirements to other Councils. On that basis, the Advisory Committee supports the ability for any Council to attach a schedule to the new Clause 52 provision which might set different requirements for different uses.

The Advisory Committee notes that the Limited Change Zone has application requirements and decision guidelines on the Use of land and these are not provided for in the Limited Change Zone and Substantial Change Zone. The Advisory Committee does not consider the inclusion of these in the Limited Change Zone will assist in clearer decision making and rather, it clutters up the zone by including repetitive matters.

The Advisory Committee recommends:

**Develop a new Clause in Particular Provisions to address '*Non-residential uses in the residential zones*' and provide a schedule to the new clause to allow local requirements for specific uses to be inserted by Councils.**

**Delete the Application Requirements and Decision Guidelines relating to Use of land from the Limited Change Zone.**

## **C2.4 Prohibiting uses**

### **What is the issue?**

It was submitted that there should be the ability in the Limited Change Zone to prohibit certain land uses through the use of the schedule to the zone. It was also submitted that current permitted uses such as Caravan park and Retirement village should be prohibited in this zone.

### **What do the zones say?**

The existing tables of uses in the residential zones are almost identical to the new zones with the exception that Office is a Section 2 use in the Substantial Change Zone and prohibited in the Incremental Change Zone and Limited Change Zone. There are also some minor differences in conditions.

Caravan park and Retirement village are a form of Accommodation and are Section 2 uses (permit required) in the proposed and existing zones.

It is not proposed to allow variance to the Table of uses in the schedule to the Limited Change Zone. The Urban Growth Zone provides for tailoring of land uses where a precinct structure plan is in place. The Comprehensive Development Zone and Special Use Zone also allow uses to be tailored within the schedules to the zone.

### **Submissions**

Macedon Ranges Residents' Association (104) submitted that uses should be able to be tailored in the zone schedules the way they can be tailored in the Urban Growth Zone.

It was submitted that uses such as Caravan park and Retirement village are intensive uses and should not be permitted in the Limited Change Zone. Residential building was suggested as a Section 2 use.

### **Discussion**

The scheduling out of land uses in the Limited Change Zone is not considered to be an approach consistent with the intent of the Residential Zones. The examples of zones where the scheduling of uses is used are not relevant to the residential zones.

The introduction of a Caravan park and Retirement village into a residential area may be appropriate in many locations, including the Limited Change Zone. The Advisory Committee considers that this would be dependent on

the reason why the Limited Change Zone was applied. If it were applied because of a Heritage Overlay or Significant Landscape Overlay, then the use of the land should be a matter for discretion.

The Advisory Committee concludes:

**Scheduling of prohibited uses or further use prohibition is not required in the Limited Change Zone.**

## **C2.5 Office in the Substantial Change Zone**

### **What is the issue?**

Concern was expressed over the inclusion of Office (subject to a permit and a 100 square metres floor space limit) in the Substantial Change Zone.

### **What do the zones say?**

The Substantial Change Zone includes Office as a Section 2 use (permit required) subject to the condition that the Office is less than 100 square metres.

Office (other than uses such as medical centre) is currently prohibited in all the residential zones.

### **Submissions**

Many submitters did not support the Office use as a Section 2 use within the Substantial Change Zone such as Manningham (34), Cardinia (118), Greater Dandenong (94) and Maroondah (151). See also the submissions from Greater Dandenong (94), Macedon Ranges Residents Association (104), Mornington Peninsula (128), Centrum Town Planning (154), Whitehorse (186) and Moreland (194). It was submitted that the use would detract from activity centres and that the Mixed Use Zone could be applied if the use was considered appropriate. Mornington Peninsula (128) submitted that offices should be able to be 'scheduled out'.

In contrast, others such as Surf Coast (78), Hume (182), Gannawarra (139) and Melbourne (174) supported Office use. The GAA supported the change but considered that the floor area should be increased to 200 square metres, seeing the use as encouraging working from or near home.

## Discussion

It is noted at the outset that there is a drafting error in the Table of uses to the Substantial Change Zone in that the use Office needs to exclude nested uses such as Medical centre.

The use of land for Office as intended in the Substantial Change Zone is not a home occupation. A Home occupation must be carried out on or in a dwelling by the resident of that dwelling and is a Section 1 (no permit required) use in each of the proposed zones. Clause 55.11 deals with Home occupation requirements. A home office of 50 square metres does not require a permit, but a permit can be granted for up to 100 square metres.

There is nothing in the exhibited Substantial Change Zone that would prevent the establishment of small office premises which were subdivided into individual tenancies of less than 100 square metres.

The concerns about the introduction of Office into the Substantial Change Zone centred on the ability for Office use to establish into clusters of small offices, each causing a commercial outcome rather than a residential one. This could occur outside of designated activity centres due to price differentials in land values. This was of particular concern in suburbs where the activity centres require stimulus. The Advisory Committee shares these concerns.

Support for Office use was generally based on the assumption that it would be located on the ground floor of residential developments greater than 3 storeys.

If the intent of the proposal is to encourage work at or near home as set out in the submission of the GAA, then perhaps there may be some sense in excluding the Substantial Change Zone from having to meet the Home occupation provisions of Clause 55.11 in terms of floor area and staff numbers (or in expanding the as-of-right provisions to 100 square metres for Home occupation in the Substantial Change Zone).

The Advisory Committee recommends:

**Correct the use of Office in the Table of uses to the Substantial Change Zone to exclude other permitted uses such as Medical centre.**

**Include a condition so that Office is permitted in the Substantial Change Zone if located on the ground floor of a multi-level building where the upper levels are used for accommodation.**

## C2.6 Residential aged care facilities

### What is the issue?

It was submitted that Residential aged care should not be an as-of-right use.

### What do the zones say?

'Residential aged care facility' is a Section 1 use (no permit required) in all of the proposed zones. This is unchanged from the existing zones.

The use is 'nested' within the definition of a 'residential building' and as such a planning permit is required for the construction or extension of a residential building in all of the existing and proposed residential zones.

### Submissions

It was submitted by a number of groups such as Planning Backlash (77) that Residential aged care should not be an as-of-right use in the Limited Change Zone. See also the submissions from the Malvern East Group (76), Macedon Ranges Residents Association (104) and the Brandon Park Residents Action Group (153).

Melbourne Water (133) submitted that Residential aged care on lots greater than 4000 square metres should require a permit in all zones because of impacts on the ability to obtain contributions for drainage and costs of service. Melbourne Water submitted that it should be a referral authority for such applications.

### Discussion

Amendment VC50 in December 2008 introduced a new definition to the planning schemes for Residential aged care and this use became a Section 1 use in all residential zones.

The Amendment also introduced a new policy to Clause 16.06 to the SPPF which has the following objectives:

*To facilitate the timely development of residential aged care facilities to meet existing and future needs.*

*To encourage well-designed and appropriately located residential aged care facilities.*

It is important to note that while the use is as-of-right, a planning permit is required for buildings and works.

It is also noted that car parking for new Residential aged care facilities or development within existing buildings would be required to meet the requirements of Clause 52.06 for one space per lodging room.

The Advisory Committee considers that the permit requirement for buildings and works and car parking would allow for consideration of matters included in the schedules to the zones and would allow Melbourne Water to consider drainage and servicing matters.

The Advisory Committee supports consideration of Melbourne Water being made a referral authority under Section 55 of the Act (Clause 66 of the scheme) for Residential buildings on lots over 4000 square metres as a separate matter.

The Advisory Committee concludes:

**The Residential aged care provisions are appropriate.**

## **C2.7 Bed and breakfast**

### **What is the issue?**

It was submitted that Bed and breakfast should not be an as-of-right use in residential zones.

### **What do the zones say?**

Bed and breakfast is a Section 1 use in the existing and proposed residential zones, provided that no more than 6 persons are accommodated and at least one car space is provided for each 2 persons accommodated. Otherwise it is a Section 2 permit required use.

Bed and breakfast is defined as:

*A dwelling, used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence.*

### **Submissions**

A number of submissions (Malvern East Group (76), 100 Waverly Road Action Group (170) and Mentiplay (167)) questioned why Bed and breakfast use should be as-of-right. It was submitted that such uses had potential off-site impacts.

## Discussion

Amendment VC04 in June 2004 introduced the existing Bed and breakfast provisions into all planning schemes. The limitation on accommodation and car parking were designed to meet industry requirements and to promote the tourism industry.

No examples were provided to the Advisory Committee to demonstrate that the use of land for Bed and breakfasts of the permissible size was problematic. The Advisory Committee cannot see any reason to amend the limitations.

The Advisory Committee concludes:

**The provisions allowing as-of-right Bed and breakfast, including the associated conditions, are appropriate.**

## C2.8 Convenience restaurant

### What is the issue?

It was submitted that the requirement for such uses as Convenience restaurant and Convenience shop to adjoin a Road Zone should be relaxed in the Substantial Change Zone and possibly the other residential zones.

### What do the zones say?

Convenience restaurant is a Section 2 use (permit required) in all the zones with the condition:

*The site must adjoin, or have access to, a road in a Road Zone.*

The condition is the same as existing zones.

It is worth noting the relevant Food and drink premises definitions and controls:

#### *Restaurant*

*Land used to prepare and sell food and drink, for consumption on the premises. It may include:*

- a) entertainment and dancing; and*
- b) the supply of liquor other than in association with the serving of meals, provided that tables and chairs are set out for at least 75% of patrons present on the premises at any one time.*

*It does not include the sale of packaged liquor.*

*Convenience restaurant*

*Land used to prepare and sell food and drink for immediate consumption, where substantial provision is made for consumption both on and off the premises.*

*Take away food premises*

*Land used to prepare and sell food and drink for immediate consumption off the premises.*

The three zones include a condition that ‘the site must adjoin, or have access to, a road in a Road Zone’ for the following Section 2 uses:

- Car wash
- Convenience restaurant
- Service station
- Take away food premises

The Service station use also has the option to ‘adjoin a business zone or industrial zone’ instead of adjoining, or having access to, a road in a Road Zone.

In addition to the above listed uses, the Limited Change Zone includes the Road Zone condition for the following Section 2 uses:

- Convenience shop
- Food and drink premises (other than Convenience restaurant and Take away food premises)
- Leisure and recreation (other than Informal outdoor recreation and Motor racing track)
- Medical centre
- Mineral, stone, or soil extraction (other than Extractive industry, Mineral exploration, Mining, and Search for stone)
- Place of assembly (other than Amusement parlour, Carnival, Circus, and Nightclub, and Place of worship – if the Section 1 condition is not met)
- Plant nursery

These uses are all Section 2 (permit required) uses in the Substantial Change Zone and Incremental Change Zone without the requirement to adjoin, or have access to a road in a Road Zone. They may have other restrictions.



## Submissions

McDonalds (143) submitted that Convenience restaurant should be as-of-right in the ground floor of multi-level buildings.

Hungry Jacks (114) submitted that Convenience restaurant should not be restricted in the Substantial Change Zone, particularly on the ground floor of buildings and where no drive- through is proposed.

Hungry Jacks also submitted that, subject to the provisions of Clause 52.20, a Convenience restaurant should be permitted in the Incremental Change Zone and Limited Change Zone.

## Discussion

In the Substantial Change Zone, one might expect to see multi-rise buildings and an emphasis on public transport and walking as modes of transport. In this form of development it may be appropriate to allow Convenience restaurant and Take away food premises in the ground floor of a building without the requirement that it adjoins or has access to a road in a Road Zone.

Certainly it is difficult to see why these uses would be ruled out entirely from non main road locations, when Tavern and Restaurant are not.

In the Incremental Change and Limited Change Zone, the Advisory Committee can see no imperative to vary the conditions for Convenience Restaurant in the same manner as for the Substantial Change Zone.

The Advisory Committee recommends:

**Remove the condition that a Convenience restaurant and Take away food premises must adjoin, or have access to a road in a Road Zone in the Substantial Change Zone.**

## C2.9 Food and drink premises in the Limited Change Zone

### What is the issue?

It was submitted that Food and drink premises should be permitted in non-main road locations within the Limited Change Zone.

### **What do the zones say?**

Food and drink premises (other than Convenience restaurant and Take away food premises) is a Section 2 use (permit required) in all the zones. The definition of 'Food and drink premises' includes tavern and restaurant.

In the Limited Change Zone a condition applies:

*The site must adjoin, or have access to, a road in a Road Zone.*

The condition in the Limited Change Zone is new.

### **Submissions**

The City of Melbourne (223) submitted that food and drink premises should be permitted in all zones and should not be restricted to main road locations in the Limited Change Zone. In inner city locations the inclusion of cafes, taverns and restaurants within residential areas are often part of the character and life of those areas.

This was supported by other submissions such as the Planning Group (43).

### **Discussion**

Food and drink premises may be inappropriate in many residential areas, but not all. This is the point of requiring a planning permit, so this judgement can be made. Uses should only be prohibited where it is clear that they are inappropriate in all areas and in all circumstances covered by the zone.

It is an attractive characteristic of much of inner Melbourne that residential areas are enhanced by small scale cafes or local oriented pubs away from main road locations; and the possibility for this type of development should continue, not only in the inner suburbs, but in all residential areas. Such uses can add significantly to the ambience and liveability of suburbs, and encourage residents to walk to facilities, rather than using a car to purchase daily items such as bread, milk and the newspaper.

The Advisory Committee recommends:

**Delete the condition '*The site must adjoin, or have access to, a road in a Road Zone*' adjacent to Food and drink premises in the table to Clause 32.01-2 in the Limited Change Zone.**

## **C2.10 Convenience shop**

### **What is the issue?**

It was submitted that the floor area limitation for convenience shop is too restrictive.

In addition, it was submitted that the condition that the use must adjoin or have access to a road in a Road Zone in the Limited Change Zone was inappropriate.

### **What do the zones say?**

The definition of 'Convenience shop' is:

*A building with a leasable floor area of no more than 240 square metres, used to sell food, drinks and other convenience goods. It may also be used to hire convenience goods.*

In the Substantial Change Zone and the Incremental Change Zone, the use of land for a Convenience shop is a Section 2 use with a condition requiring the floor area to be 80 square metres or less.

In the Limited Change Zone, the use Convenience shop is limited by conditions in the table of uses to land that adjoins or has access to a Road Zone and a maximum floor area of 80 square metres.

### **Submissions**

The GAA submitted that the restrictions on the floor area of Convenience shop in residential areas were not appropriate, particularly in the Substantial Change Zone where mini-supermarkets may be able to be accommodated on ground floors.

Patterson (8) submitted that there would be few convenience shops of 80 square metres or less and that 100 square metres would be a more appropriate limit for all zones.

It was submitted that the condition in the Limited Change Zone that a site adjoin or have access to a road in a road zone was unnecessary.

### **Discussion**

Convenience shops may be inappropriate in some residential areas, and as previously mentioned, this is the point of requiring a planning permit, so this judgement can be made.

A number of residential areas are enhanced by small convenience shops away from main road locations and the possibility for this type of development should continue.

In the Substantial Change Zone the Advisory Committee can see good reason to lift restrictions on the size of convenience shops. Where increased densities are encouraged, larger conveniences may be required. The definition itself limits development to 240 square metres which would be a sufficient control within the Substantial Change Zone. It seems strange to the Advisory Committee that in a residential zone a Shop serving the needs of local residents must be smaller than an office providing for commercial activity.

The Advisory Committee recommends:

**Delete the condition *'The site must adjoin, or have access to, a road in a Road Zone'* adjacent to Convenience shop in the table to Clause 32.01-2 in the Limited Change Zone.**

**Delete the condition *'The leasable floor area must not exceed 80 square metres'* adjacent to Convenience shop in the table to Clause 32.02-2 in the Substantial Change Zone.**

## **C2.11 Hairdressers and Beauty salons**

### **What is the issue?**

It was submitted that Hairdresser and beauty spa (which falls under the definition of Beauty salon) should not be prohibited in residential areas.

### **What do the zones say?**

Hairdresser and Beauty salon are nested in the definition of 'Shop' and are prohibited in all the zones as they fall within 'Retail premises' (and are not a Community market, Convenience shop, Food and drink premises, or Plant nursery).

Hairdresser and Beauty salon are currently prohibited in the existing zones. However, either use can be undertaken as a Home occupation.

### **Submissions**

Corangamite (135) submitted that hairdressers and beauty spas should be permitted in residential areas and that a new definition of beauty/ health/day

spa be developed to reflect this new common land use. Corangamite submitted that such land use would be appropriate in residential areas.

### Discussion

Hairdressers and Beauty salons are a commercial use appropriate to the retail or commercial areas. Such uses often support the periphery of retail centres where rentals are lower. Either use can be undertaken in residential areas as a home occupation.

The Advisory Committee concludes:

**The controls over Hairdressers and Beauty salons are appropriate.**

## C2.12 Limit on the number of animals that can be kept

### What is the issue?

Concern was raised over the limited number of animals set out as a condition against Animal keeping in the as-of-right section of the Tables of uses.

### What do the zones say?

The zones include in Section 1 the Table of uses:

USE	CONDITION
Animal keeping (other than Animal boarding)	Must be no more than 2 animals.

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The zones include in Section 2 the table of uses:

USE	CONDITION
Animal keeping if the Section 1 condition is not met	Must be no more than 5 animals.

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'Animal Keeping' is defined as:

*Land used to:*

- a) *breed or board domestic pets; or*
- b) *keep, breed or board racing dogs.*

This is unchanged from the current zones.

## Submissions

Patterson (8) submitted that the definition resulted in issues with the keeping of domestic birds, such as birds in an aviary, and suggested that the definition be amended or a new definition of 'Domestic animals' be included to clarify that pets kept as part of a hobby were exempt from the definition of animal keeping.

Other submissions reflected these concerns (Stabb (51), Orange (96), Macedon Ranges Residents Association (104) and Bright and District Ratepayers Association (146)) suggesting that the limitations on Animal keeping for domestic pets such as fish, rabbits or guinea pigs were unreasonable.

## Discussion

This issue centres on the concept of what is 'ancillary' to the normal use of a dwelling. The keeping of domestic pets (including atypical pets such as pigs) is generally ancillary to the use of the land as a dwelling (Refer to: *Tyquin & ors v Macedon Ranges SC & Anor* [2002] VCAT 624 (9 April 2008)). This is unless breeding or boarding of animals is proposed as set out in the definition of 'Animal keeping'.

It is a question of scale in each case and most likely dependent on the size of the pets to be bred. Breeding fish in a back room for own amusement would be ancillary to the use of the dwelling and therefore not require a permit. Setting up a trout breeding operation with fingerlings for sale in a disused swimming pool is probably not ancillary, however may be considered a 'home occupation' as the definition permits other uses. Several swimming pools of trout are probably not appropriate.

The Advisory Committee notes that there are no changes from the existing zones and there is no basis to modify the existing approach.

The Advisory Committee concludes:

**The limits on Animal keeping in the residential zones are appropriate.**

## **C2.13 Horse stables**

### **What is the issue?**

Concerns were raised that horse stables should be permitted in residential zones, particularly in rural areas.

### **What do the zones say?**

Horse stables are a Section 3 prohibited use in both the existing and proposed zones. It is noted that the use is discretionary in the Low Density Residential Zone and Township Zone.

The use is undefined but is nested in Animal husbandry (which also includes Animal keeping) which is in turn nested in Agriculture.

Animal husbandry is defined as:

*Land used to keep, breed, board, or train animals, including birds.*

### **Submissions**

Orange (96) and Kilmore Integrity Kept Inc (92) questioned why horse stables were prohibited in residential zones, particularly in rural areas.

### **Discussion**

Horse stables are not prohibited within the Low Density Residential Zone and Township Zones.

Horse stables are prohibited in the Residential 1 Zone. It would appear that as with Animal keeping above, it is a question of what is ancillary to a dwelling. The keeping of a horse for a short time on a large residential block may be considered ancillary to a dwelling, however more permanent keeping of horses would be prohibited.

The Advisory Committee concludes:

**Horse stables are appropriate as a Section 3 use in the three residential zones.**

## C2.14 Place of worship

### What is the issue?

It was submitted that the conditions pertaining to Place of worship should be reviewed to help facilitate activities typical to a Place of worship, rather than being so limiting.

### What do the zones say?

Place of worship is a Section 1 use (no permit required) in all existing and proposed residential zones provided the following condition is met:

- Must be no social or recreation activities.
- The gross floor area of all buildings must not exceed 180 square metres.
- The site must not exceed 1200 square metres.
- The site must adjoin, or have access to, a road in a Road Zone.

If the condition is not met, a planning permit is required.

### Submissions

A number of submissions raised concern about the lack of clarity around what comprises a Place of worship. Mentiplay (167) submitted that social and recreational activities are an integral part of church activities:

*However renting the hall out for a 21st birthday party is a different issue. Where is the dividing line between religious activities and recreational activities? How do you define each of them?'*

The submission also questioned the imposition of site area limitations, commenting that the attendance numbers and parking will dictate the site requirements.

Orange (96) commented that the conditions on Places of worship were too limiting, particularly in the context of incremental or substantial change areas; and that provision of facilities for recreational and social activities should be a priority in areas of higher density living.

Other submissions raised concern that the use of land for a Place of worship should not be included in Section 1 but rather in all cases, should require planning approval.



## **Discussion**

The Place of worship provisions were introduced into the schemes to provide for small places of worship without planning permits. The Advisory Committee considers that places of worship form an integral part of any community and should not be excluded from residential areas.

Where a proposal is of a scale which falls outside the conditions in Section 1 a planning permit will and should be required.

The Advisory Committee concludes:

**The provisions for Place of worship in the residential zones are appropriate.**

## **C3. Notice and review**

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The original consultation draft proposed to exempt applications from third party notice and appeal rights. The proposed zones raised a number of issues.

### **C3.1 Third party notice and review rights for development**

#### **What is the issue?**

It was submitted that the introduction of third party rights into the Substantial Change Zone (compared to the Residential 2 Zone) was 'a backward step'. Others supported the change.

On the other hand, there is concern over the potential for the loss of third party rights as a result of the ability to specify notice and review exemptions for use and development in the zones' schedules.

#### **What do the zones say?**

The current Residential 2 Zone has an exemption from notice and appeal for development.

With the exception of subdivisions in the Substantial Change Zone, there are no third party exemptions. Each zone provides that a schedule may specify that an application is exempt from third party notice and appeal rights.

#### **Submissions**

The original consultation draft proposed to exempt applications from third party notice and appeal rights. Numerous submitters welcomed the new provisions, although some expressed reservations about the ability to schedule out third party involvement.

Others such as Whitehorse (186) recognised a use for the schedules for areas where a structure plan or equivalent control had been drafted where notice might therefore be unnecessary.

VicRoads (32) submitted that any scheduled exemptions to third party notice and appeal rights should not include servicing authorities – that is, the service authorities that should receive notice.

Many submitters considered that the inclusion of third party notice and appeal rights in the Substantial Change Zone was a backward step including the HIA (150), UDIA (60), VPELA (74) and others (see The Planning Group (43), Tract (95) and Roberts Day (181)). By contrast, Planning Backlash (77), among others, support the provision.

### **Discussion**

The Advisory Committee considers that the reintroduction of advertising and appeal provisions for use and development in the Substantial Change Zone should be supported. It is commonly held that the implementation of the Residential 2 Zone has been hampered by the removal of third party notice and appeal rights. This makes the zone unattractive to councils and is currently applied in a limited number of planning schemes.

The Advisory Committee supports the much wider application of the Substantial Change Zone, and as such notice and appeal provisions are generally appropriate.

The new zone provides the option of removing of third party notice and appeal rights via the schedule. Such an exemption can be included in existing Residential 2 Zone areas if the council so wishes. The Advisory Committee supports the flexibility which is now built into the new zones which enables a council to turn on or off the notice provisions depending on local circumstances.

The remaining issue is the exemption for subdivision in the Substantial Change Zone. The Advisory Committee considers that these exemptions should remain. The key issues for subdivision in the Substantial Change Zone will likely be the potential for underdevelopment and this should be able to be addressed by Responsible Authorities.

In respect to VicRoads, it is already a referral authority under Section 55 of the Act for most applications affecting main roads.

The Advisory Committee concludes:

**The proposed third party notice and appeal provisions in relation to use, development and subdivision are appropriate.**

## **C3.2 Subdivision of existing development**

### **What is the issue?**

Concerns were expressed around exemption of third party rights for certain subdivisions in the Incremental Change Zone and Limited Change Zone.

### **What do the zones say?**

In the Incremental Change Zone and Limited Change Zone, subdivision of land into lots containing an existing dwelling or car space is exempt from third party notice and appeal rights. This is the same as the Residential 1 and 3 Zones.

### **Submissions**

Some objection was expressed to exemptions from third party notice and appeal provisions for existing dwellings or car parks in the zones. Any erosion of third party rights was not supported (West of Elgar residents Association, 233).

### **Discussion**

The provisions for subdivision prevent the doubling up of third party processes from existing dwelling development approvals and are consistent with the existing zones.

The Advisory Committee concludes:

**The proposed third party notice and appeal provisions in relation to subdivisions in the Limited Change Zone and Incremental Change Zone are appropriate.**

## **C4. Subdivision**

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A number of submissions raised issues relating to subdivision provisions.

### **C4.1 Need for subdivision permit for approved residential developments.**

#### **What is the issue?**

It was submitted that no planning permit should be required to subdivide residential developments that have been assessed against Clause 55 (*ResCode*).

#### **What do the zones say?**

Each of the proposed zones includes:

*A permit is required to subdivide land.*

Exemptions for existing dwellings from the need to comply with Clause 56 are provided and applications of this nature are exempt from third party notice and appeal provisions as outlined earlier.

#### **Submissions**

The Association of Consulting Surveyors (14) submitted that subdivision applications that are consistent with approved multi-unit development permits should not require further town planning approval.

#### **Discussion**

A planning permit is required for subdivision, but it is exempt from third party notice and appeal rights where the multi-unit development has been constructed.

While the planning permit process is not difficult or extended due to the third party exemptions, such applications can have the tendency to add to the workloads of planning departments, and there would be merit in the exemptions as suggested by the Consulting Surveyors.

However, if no planning permit was to be required three key issues arise which would need to be addressed:

- Requiring a subdivision permit ensures that the lot boundaries, particularly as they relate to open space and common property (for example shared parking) align with the planning permit. Even if a permit were not required, this checking would still need to be done.
- Any referral authority requirements relating to subdivision need to be addressed.
- It is at this stage (the planning permit for subdivision) whereby public open space contribution requirements are usually assessed and placed on permits as conditions.

It is the last of these which the Advisory Committee sees as the largest impediment to the ability to exempt a residential subdivision from the need for a planning permit. The issue of open space contributions would need to be addressed as part of a further review.

The Advisory Committee concludes:

**The requirements for permits to subdivide multi-unit developments are appropriate.**

## **C4.2 Meeting Clause 56 requirements**

### **What is the issue?**

It was submitted that an application for a permit for subdivision of existing buildings should have to meet the requirements of Clause 56 of the scheme.

### **What do the zones say?**

In the proposed zones, applications to subdivide land into lots containing an existing dwelling or car space do not have to meet the requirements of Clause 56:

*An application to subdivide land, other than an application to subdivide land into lots each containing an existing dwelling or car parking space, must meet the requirements of Clause 56 ...*

### **Submissions**

Melbourne (174) offered support for subdivisions where an existing development has been constructed to be exempted from Clause 56 provisions. See also the submissions from Tract Consultants (95), Gannawarra (139), HIA (150), Blackwood (188), Mount Alexander (190) and Inner South Metropolitan Mayors Forum (231).

Stormwater Victoria (173) felt that Clause 56 requirements should apply to all applications for subdivision so that water sensitive urban design requirements in that clause could be applied.

### **Discussion**

It is only subdivision applications for existing dwellings or car spaces which are exempt from Clause 56 provisions. This was supported by submitters.

Water sensitive urban design requirements should have been addressed for existing dwellings and car spaces at the development stage.

Once a building is constructed it is too late to apply buildings and works conditions. Development conditions are best addressed at the time of the original planning application.

The Advisory Committee concludes:

**Exempting applications to subdivide land into lots each containing an existing dwelling or car parking space from the requirements of Clause 56 is appropriate.**

## **C4.3 Lot size averaging**

### **What is the issue?**

A number of overlays contain minimum lot sizes but allow for averaging of lots sizes or apportioning common property. These techniques are not available in the Limited Change Zone.

### **Submissions**

It was submitted that the minimum lot size provisions for the Limited Change Zone would need to allow exemptions for matters such as averaging options where only the average lot size of a subdivision needs to meet the minimum lot requirements, not every individual lot.

### **Discussion**

Many existing Design Development Overlays contain minimum lot size provisions but also contain a range of calculation methods and averaging options.

If the Limited Change Zone also contains a minimum lot size, or if the schedule replaces an overlay with such a provision, it will be necessary to

provide flexibility in the wording of the schedules to take these variations into account.

The Advisory Committee has already recommended that minimum lot sizes be deleted from the Limited Change Zone and if strategically justified, be included in overlays.

#### **C4.4 Consolidation requirement in the Substantial Change Zone**

##### **What is the issue?**

It was submitted that the Substantial Change Zone should provide a mechanism or requirement for site consolidation.

##### **What do the zones say?**

The zones do not provide for requirements to consolidate land to help achieve higher densities.

##### **Submissions**

Kingston (38) submitted that consolidation requirements should be able to be addressed in the zone, otherwise existing Design and Development Overlays would need to remain. See also the submissions from Melton (102), Inner South Metropolitan Mayors Forum (231) and Manningham (34).

##### **Discussion**

The use of consolidation requirements, especially if they are mandatory, can act to discourage development due to the difficulties associated with achieving site consolidation. If any control is contemplated, it should be performance based.

Design Development Overlay 12 in Kingston applies to the Highett Activity Centre. The purposes of the overlay encourage development on consolidated land. The controls provide for height controls in some areas 'subject to consolidation', although this is not defined. Site consolidation is not defined but would be guided by the structure plan.

Design Development Overlay 8 in Manningham applies to residential areas surrounding activity centres and along main roads. Its purpose includes encouraging three storey apartment style developments on large lots. It does not specifically refer to consolidation but rather encourages 11 metres high proposals on sites of 1800 square metres or more with a height of 9 metres on smaller sites.



Often it is difficult to gain contiguous sites particularly where development has already occurred intermittently. An example is where new dwellings or units have been constructed between older sites thus limiting consolidation potential.

An advantage of the new zones is that they can set design objectives. As discussed in section 7.1, the Advisory Committee considers that in the Substantial Change Zone these would identify the preferred building form, and this could be based on consolidation if this were required. However, it would seem to the Advisory Committee that a better approach is to set development parameters that allow for redevelopment without consolidation. This may mean introducing a different set of controls for walls on boundaries or for setbacks.

The Advisory Committee concludes:

**There is no need to introduce specific consolidation requirements into the Substantial Change Zone.**

## **C4.5 Public open space contributions**

### **What is the issue?**

Public Open Space contributions should be specified in the zones.

### **What do the zones say?**

The zones do not address public open space contributions.

Clause 52.01 provides that a public open space contribution can be sought in accordance with a schedule to that Clause or alternatively, that the provisions of Clause 18 of the *Subdivision Act 1988* may be applied.

Accordingly, pursuant to the *Subdivision Act 1988* s.18(1A), a council may only make a public open space requirement if it considers that, as a result of the subdivision, there will be a need for more open space, having regard to:

- (a) *the existing and proposed use or development of the land;*
- (b) *any likelihood that existing open space will be more intensively used after than before the subdivision;*
- (c) *any existing or likely population density in the area of the subdivision and the effect of the subdivision on this;*
- (d) *whether there are existing places of public resort or recreation in the neighbourhood of the subdivision, and the adequacy of these;*

- (e) *how much of the land in the subdivision is likely to be used for places of resort and recreation for lot owners;*
- (f) *any policies of the Council concerning the provision of places of public resort and recreation.*

### **Submissions**

Kingston (38), Brimbank (111) and the Inner South Metropolitan Mayors Forum (231) submitted that the schedules should address public open space contributions.

Many community group and individual submitters emphasised the need to ensure ongoing public open space provision and maintenance in all zones, but particularly the Substantial Change Zone.

### **Discussion**

Public open space contributions apply to the subdivision of land – not just to land in the new residential zones, but to the other residential zones and indeed industrial and other zones. The Advisory Committee considers that the public open space contribution should remain in the Particular Provisions.

There is nothing to prevent a council from including differential public open space contributions in Clause 52.01 for the different zones.

The Advisory Committee concludes:

**It is not appropriate to introduce public open space requirements into the new zones.**

## **C5. Dwellings**

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### **C5.1 Permits for single dwellings**

#### **What is the issue?**

Conflicting views were raised in respect to the permit requirements for single dwellings.

#### **What do the zones say?**

The new zones retain single dwellings 'as-of-right' with approvals required in the building system except for lots less than 300 square metres (or 500 square metres if nominated).

The Substantial Change Zone only requires a permit for single dwellings on lots less than 300 square metres.

Both the Incremental Change Zone and Limited Change Zone require a planning permit for dwellings on lots less than 300 square metres and also retain the current ability for the schedule to require a permit for single dwellings on lots less than 500 square metres.

#### **Submissions**

SOS (229) and Sheryl O'Donnell (98) submitted that all single dwellings should require a planning permit.

Conversely, the Property Council of Australia (149) submitted that there should be no planning permit for dwellings on lots less than 300 square metres. Stockland (100) commented that this long-standing requirement results in unnecessary applications, wasted resources and lengthy delays, submitting a reduction of this area to 250 square metres would greatly alleviate these problems and better align statutory standards to the increasing residential densities demanded by Government policy, housing affordability and market choice.

Thomas & George Pty Ltd (48) and the Building Designers Association (59) submitted that lots between 300 and 500 square metres in the Incremental Change Zone should not require town planning approval.

Other submitters, including Toorak Village Residents Action (91) and Macedon Ranges Residents Association (104) sought a permit for all development on lots of this size. Planning Backlash (77) submitted that the existing permit requirements for lots between 300 square metres and 500 square metres should be retained.

### **Discussion**

The Advisory Committee recognises that there are inherent conflicts between exempting single dwellings from the need for planning approval and the achievement of neighbourhood character objectives. This issue arose and was considered in the context of the *Good Design Guide* and then *ResCode*.

However, the burden on planning resources by requiring a permit for all single dwellings has been consistently held to work against the planning system. In all the zones, single dwellings will potentially require a planning permit where the height provisions are exceeded. In the Limited Change Zone, a single dwelling will be restricted to any mandatory height limit applied.

In addition, the Advisory Committee supports the retention of existing overlay controls, any requirements of those overlay provisions will need to continue to be met, potentially triggering the need for a permit.

The Advisory Committee concludes:

**The provisions relating to permits required for single dwellings in the residential zones are appropriate.**

## **C5.2 Underdevelopment in the Substantial Change Zone**

### **What is the issue?**

It was submitted that a permit should be required for a single dwelling in the Substantial Change Zone so that 'underdevelopment' does not occur.

### **What do the zones say?**

The Substantial Change Zone does not require a permit for a single dwelling except where the lot is less than 300 square metres.

### **Submissions**

Cardinia (118) expressed concerned about possible underdevelopment in the Substantial Change Zone.

## Discussion

Underdevelopment is a distinct possibility in the Substantial Change Zone where permits are not required for single dwellings depending on the market conditions in the area.

In *Doncaster Road Property Partnership v Manningham CC* [2004] VCAT 2445, the Tribunal said with respect to underdevelopment that:

*[62] As structure plans are often intended to guide planning and be implemented over many years, situations will arise where the market will not yet support policy outcomes. When the market is not yet ripe for the type of use or development envisaged by policy, we consider there are a number of interim solutions that may be implemented.*

- *Existing development can be recycled. Alterations or additions to buildings should be supported that will facilitate ongoing or alternative uses in the short to medium term.*
- *Time limits can be attached to permits.*
- *New uses with no or minimal development components can be approved. So long as the use or development in question does not compromise the long-term strategy objectives, there is no reason why a site should not be used for an interim, alternative use, which might be expected to give way over time to a use or development that better meets the planning scheme objectives.*
- *Development is designed to accommodate later change. There is no reason why development which implements long-term strategy objectives cannot be built or developed in stages.*

The key question is: why would underdevelopment occur? The Advisory Committee considers that the main drivers of ‘underdevelopment’ will be:

- lack of certainty or support for higher density development; coupled with
- inadequate financial returns for higher density development.

The zones will make the development expectations in an area clear, and this should direct development into appropriate locations (provided the development expectations are commercially viable).

The Advisory Committee concludes:

**Controls relating to ‘underdevelopment’ are not appropriate.**

### **C5.3 Outbuildings and works normal to a dwelling**

#### **What is the issue?**

There was confusion as to the exemptions for outbuildings and works normal to a dwelling in the zones.

#### **What do the zones say?**

For example, the Incremental Change Zone states:

*No permit required*

*No permit is required to:*

- *Construct or carry out works normal to a dwelling.*
- *Construct or extend an out-building (other than a garage or carport) on a lot provided the gross floor area of the out-building does not exceed 10 square metres and the maximum building height is not more than 3 metres above ground level.*

These provisions are the same as existing provisions in the Residential 1 Zone.

#### **Submissions**

Submissions from Patterson (8), Port Campbell Community Group (18), Toorak Village Residents Action Group (91) and Macedon Ranges Residents Association (104) submitted that the provisions relating to outbuildings were not clear. It was submitted that outbuildings that do not require a permit could be constructed in front yards.

A number of other submissions – Williamstown Newport Spotswood Residents Association (225), Murray (108), Brandon Park Residents Action Group (153) and McLean (207) – also asked what was meant by ‘works normal to a dwelling’? Works normal to a dwelling are building works, for example earthworks, that are typical of a normal dwelling. This means a planning permit is not required for works that are typical of a dwelling.

#### **Discussion**

These provisions are the same as in the existing zones and the Advisory Committee is not aware of any problems arising from the current controls.

The Advisory Committee concludes:

**The provisions relating to outbuildings are appropriate.**

## **C5.4 Permit exemptions for ResCode compliant development**

### **What is the issue?**

It was submitted that dual occupancies (two dwellings on the one lot) and possibly other residential development where the provisions of Clause 55 and the zone schedules are met, should not require a planning permit.

### **What do the zones say?**

The construction of two or more dwellings on a lot requires a planning permit in all zones, both existing and proposed.

### **Submissions**

MacroPlan (158) referred to earlier as-of-right dual occupancy provisions (1990s) which exempted dual occupancies from the need for a permit provided they met certain conditions. They felt that there was considerable scope to 'code assess' developments which, if compliant, would not need planning permission.

Gilbert (199) submitted that dual occupancies should be 'as-of-right' to provide greater certainty. The submission suggests that dual occupancies (where an existing home is retained / recycled, coupled with the construction of a dwelling to the rear) warrant an exemption from the planning permit process, as this form of development is more sympathetic to streetscapes and neighbours, than other infill development types.

Tract (95) and others (Gannawarra (139), HIA (150), Mount Alexander (190) and Inner South Metropolitan Mayors Forum (231)) also suggested that there could be reductions in permit requirements for development that met *ResCode*. For example, single storey developments.

### **Discussion**

There was a time in the Victorian planning system when dual occupancies were as-of-right. This approach was removed for a number of reasons, including concerns that a developer might proceed with a dual occupancy rather than a more intensive form of development, even if the site was ideally suited to more than two units.

While it is true that there were high numbers of dual occupancies built in the late 1980s and early 1990s, the key driver for introducing this exemption was to assist in urban consolidation objectives as part of a broad range of housing policy initiatives. It actually resulted in underdevelopment and did not meet

consolidation objectives at all. Additionally, many of the dual occupancies built during this era were less than desirable in built form terms, and this exemption was revoked when *ResCode* was introduced.

While the Advisory Committee has some sympathy for the submissions calling for permit exemptions to the *ResCode* compliant development (and particularly dual occupancies), it considers that more work needs to be done on this issues and it needs to be further explored. This proposal has merit and should be kept alive for further consideration as part of the ongoing 'Code-Assess' initiatives and review.

The Advisory Committee concludes:

**Requiring a permit for dual occupancies and other development that complies with *ResCode* provisions is appropriate. However, this is an issue that needs to be further reviewed.**

## **C5.5 Double storey development in rear yards**

### **What is the issue?**

A number of existing schemes have policies discouraging double storey development in rear yards.

### **What do the zones say?**

There are no specific provisions in the new zones.

### **Submissions**

Kingston (38) sought the ability to limit double storey development in rear yards as per its existing policy. Glen Eira also has similar policy provisions.

### **Discussion**

In all zones, the appropriateness of double storey development in rear yards will be subject to tougher tests in terms of site layout, landscaping and amenity impacts because the potential impacts are greater than at the front of the site.

The Advisory Committee agrees that the way the height limits were exhibited, it would be difficult to develop a schedule that limited two storey development in rear yards if this was strategically justified.

The Advisory Committee concludes:



**The revised zones provide a greater degree of flexibility and could include controls on the height of buildings in rear yards if justified.**

## **C5.6 Permit or dispensation process for high front fences**

### **What is the issue?**

Concern was raised over the way high front fences are approved; and the overlap between planning permits and building permit dispensations.

### **What do the zones say?**

The new zones essentially provide that if a planning permit is not required for a dwelling, a permit is not required for a high front fence associated with that dwelling. This is the situation whether the default heights of Clause 54 and 55 apply, or an altered requirement in the zone.

This is the same regime as existing zones.

### **Submissions**

The Building Designers Association (59) submitted that all front fencing should be regulated through the building permit system.

Maroondah (151) also raised issues in respect to fencing.

### **Discussion**

Sometimes just a building permit is required for a dwelling, and sometimes a planning and building permit are both required. When a planning permit is required, the building permit does not reassess 'siting' issues. When a planning permit is not required, and only a building permit is required, a dispensation can be obtained from Council (provided it is justified) so that certain requirements of *ResCode* (for example some setbacks) do not have to be met.

If a planning permit is required, a permit can allow a fence higher than the *ResCode* standard. If no planning permit is required, dispensation under the Building Regulations would be required. These systems are well established and seem to be working.

The Advisory Committee concludes:

**The controls over fences are appropriate.**

## **C6. The Schedules**

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### **C6.1 'Area' or 'Precinct'**

#### **What is the issue?**

It was submitted that the use of the term 'area' in the zone header and 'precinct' in the schedule was inconsistent and unclear.

#### **Submissions**

The Planning Group (43) noted that the terms 'area' and 'precinct' were not defined and were used interchangeably in the zones.

#### **Discussion**

The Advisory Committee agrees with submitters that there should be consistent wording between the zone and schedule.

The Advisory Committee recommends:

**Change Clause 1.0 of the schedules to each zone to refer to 'area' rather than 'precinct' for consistency.**

### **C6.2 Relationship between the Neighbourhood Character Overlay and the zones**

#### **What is the issue?**

The interaction between the zones and the Neighbourhood Character Overlay is unclear.

#### **What do the zones say?**

The zones allow certain Clause 54 and Clause 55 standards to be varied, but not as many as the Neighbourhood Character Overlay.

Clause 54 and Clause 55 state:

*If the schedule to a zone specifies a requirement of a standard different from a requirement set out in this clause, the requirement in the schedule to the zone applies.*

*If the land is included in a Neighbourhood Character Overlay and a schedule to the overlay specifies a requirement of a standard different from a requirement set out in this clause or a requirement in the schedule to a zone, the requirement in the schedule to the overlay applies.*

*If the land is included in an overlay, other than a Neighbourhood Character Overlay, and a schedule to the overlay specifies a requirement different from a requirement of a standard set out in this clause or a requirement of a standard set out in the schedule to a zone, the requirement in the overlay applies.*

### **Submissions**

Many submissions questioned the ongoing role of the Neighbourhood Character Overlay given that the new zones may specify design and neighbourhood character objectives and vary many of the same *ResCode* (Clauses 54 and 55) provisions.

### **Discussion**

The interaction between the zone and any existing Neighbourhood Character Overlay seems clear to the Advisory Committee. A Neighbourhood Character Overlay or other overlay overrides anything in Clause 54 or 55 or the schedule to a zone. However, it would be sensible to ensure that the schedules are drafted to avoid duplication of neighbourhood character objectives in the Limited Change Zone where specification is mandatory.

The Advisory Committee concludes:

**The interaction with the Neighbourhood Character Overlay is clear, although it does require careful reading of the VPP.**

## **C6.3 Variation of Clause 54 and 55 standards by locations**

### **What is the issue?**

It was submitted that the schedule should allow for the variation of standards by location or circumstance within a precinct: for example whether the lot faces land in a road zone or not.

### **What do the zones say?**

The table contained in the three schedules '*Requirements of Clause 54 and 55*' does not specify any constraints to prevent precinct-based requirements.

## **Submissions**

It was submitted that there should be flexibility to provide for variations by location in the schedules. For example, if the only difference between three areas was the frontage setback, then a single schedule should apply and the variation to the frontage setback be specified as different in the three areas described.

Additionally, submissions sought variability within the schedule for varying circumstances such as for corner sites or for attached dwellings etc.

## **Discussion**

The table, *'Requirements of Clause 54 and 55'* contained in the three schedules, does not specify any constraints to prevent precinct-based or circumstantial requirements.

The existing Clause 54 and 55 provisions provide for precinct variability and for different development contexts for matters such as the street setback standards, where different setback requirements are given for corner sites, side streets etc. In order to acknowledge the differing circumstances within a municipality or precinct, it would be expected that the same would be possible in the schedules.

The Advisory Committee considers that to allow for the reduction in the potential number of schedules sought by Councils, the schedules should be able to be varied by location. Practice advice can clarify this and can provide appropriate examples of how this can be executed in the schedules.

The Advisory Committee recommends:

**Include the ability to vary standards by location and development context in the schedules.**

## **C6.4 Walls on boundaries**

### **What is the issue?**

The ability to vary the standard for walls on boundaries was seen as a problem because developers could not apply a standard product across all areas.

### **What do the zones say?**

The *ResCode* walls on boundaries requirements in clauses 54 and 55 can be modified in the schedules to the zones. The Substantial Change Zone can specify a greater length for walls on boundaries, while the Incremental Change Zone and the Limited Change Zone may specify a different length for a wall on a boundary.

### **Submissions**

The Housing Industry Association (150) disagrees with providing an option to reduce the permissible length of walls on boundaries, commenting that the smaller average lot sizes in Melbourne's growth areas and the need for redevelopment in established suburbs necessitate the retention of the existing *ResCode* standards.

### **Discussion**

Preventing the variation of this standard would make certain new forms of housing, for example new row housing on lots in different ownerships, impossible to achieve. This would seriously undermine the flexibility of the zones, particularly the Substantial Change Zone, which requires this variation option in order to facilitate higher densities.

In some cases it may be appropriate to specify a lesser length of walls on boundaries, but this would need to be strategically justified.

The Advisory Committee concludes:

**The ability to vary the standard for walls on boundaries is an important tool to support some forms of higher density housing and respond to local conditions.**

## **C6.5 Car parking**

### **What is the issue?**

It was submitted that the zones should be able to specify a different car parking requirement.

### **What do the zones say?**

The zones do not change the existing situation with parking.

It is not possible to change the parking rate by way of a parking precinct plan because Clause 54 or 55 would override the provisions of the plan.

### **Submissions**

VPELA (74) and others submitted that car parking requirements should be able to be varied in a Substantial Change Zone.

Surf Coast (78) and Melton (102) suggested that the car parking provisions of Clause 54 and 55 should be able to be varied as per the Neighbourhood Character Overlay provisions.

### **Discussion**

Parking demand varies across Victoria. It would be desirable to provide for flexibility over car parking requirements to recognise this in the same manner as the Neighbourhood Character Overlay.

The Advisory Committee concludes that consideration be given to amending Clause 52.06 so that Parking Precinct Plans can apply to development covered by Clauses 54 and 55.

## **C6.6 Private open space and landscaping**

### **What is the issue?**

Concern was expressed that the Substantial Change Zone only allows open space areas to be reduced, and that it should be possible to require space for canopy trees in all zones.

It was also submitted that the schedules should include the ability to vary the landscaping standard of Clause 55.

### **What do the zones say?**

The zones allow changes in area or dimensions as set out in the following table.

**Schedule provisions over open space**

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<b>Substantial Change Zone</b>	The schedule may specify a <u>reduced area or dimension</u> of private open space.
<b>Incremental Change Zone</b>	The schedule may specify a <u>different area or dimension</u> of private open space.
<b>Limited Change Zone</b>	The schedule may specify a <u>different area or dimension</u> of private open space.

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The importance of vegetation or landscaping to the character of an area would be able to be specified in the neighbourhood character or design objectives to be achieved in a schedule.

The zones do not provide for variation to Standard A8 or Standard B13 which are:

*Standard A8*

*Development should provide for the retention or planting of trees, where these are part of the neighbourhood character.*

*Development should provide for the replacement of any significant trees that have been removed in the 12 months prior to the application being made.*

*Standard B13*

*The landscape layout and design should:*

- *Protect any predominant landscape features of the neighbourhood.*
- *Take into account the soil type and drainage patterns of the site.*
- *Allow for intended vegetation growth and structural protection of buildings.*
- *In locations of habitat importance, maintain existing habitat and provide for new habitat for plants and animals.*
- *Provide a safe, attractive and functional environment for residents.*

*Development should provide for the retention or planting of trees, where these are part of the character of the neighbourhood.*

*Development should provide for the replacement of any significant trees that have been removed in the 12 months prior to the application being made.*

*The landscape design should specify landscape themes, vegetation (location and species), paving and lighting.*

## Submissions

Many submitters were concerned that the ability to decrease private open space would result in less open space for trees and character.

Others including Bayside (30), Banyule (16), Nillumbik (142), Beaumaris Conservation Society (55) and Casey (99) also suggested changes.

Knox (189) submitted that attempting to achieve neighbourhood character objectives through the use of variations to *ResCode* had presented difficulties. For example, the increased open space requirements in the Residential 3 Zone were introduced for neighbourhood character purposes. However the *ResCode* objectives refer only to the recreational needs of residents and as such, the increased open space is sometimes not required.

## Discussion

Vegetation cover is a key aspect of neighbourhood character and some areas already have controls that require larger private open space areas and provide for canopy trees.

Allowing the zones to provide for a variation in landscaping standards as in the Neighbourhood Character Overlay including provision for canopy trees will enable the zones, particularly the Limited Change Zone, to better respect landscape values.

However, the way in which the landscaping standards are worded are quite subjective and the Advisory Committee has concerns that complex drafting will be required to vary the standard.

The Advisory Committee understands the reasoning behind only allowing reduced open space in the Substantial Change Zone, but as it is recommending that this zone be capable of being applied to broad areas, it considers that this standard should be capable of being varied both ways as in the other zones.

The Advisory Committee recommends:

**Include the ability to vary landscaping standards, including provision for canopy trees.**

**Allow the Private Open Space standard to be varied higher or lower in the Substantial Change Zone.**



## **C6.7 Tree Protection**

### **What is the issue?**

It was submitted that there should be provision to require planning permits for tree removal.

### **What do the zones say?**

Existing or proposed zones do not require a permit to remove vegetation (though a number of residential areas are covered by overlays with these requirements). It is worth noting that Clause 54 and Clause 55 include a standard that:

*Development should provide for the replacement of any significant trees that have been removed in the 12 months prior to the application being made.*

### **Submissions**

Concern around vegetation removal and landscaping was one of the most common submissions. Part of the concern is the practice of 'moonscaping' where all vegetation is removed from a lot before an application for higher density development is made (Rimmington (9), Harrod (56), Malvern East Group (76), and O'Donnell (98)).

### **Discussion**

The issue of requiring a permit for vegetation removal is discussed in section 5.3. Essentially the Advisory Committee has determined that overlay controls are the best method of requiring tree removal permits.

The Advisory Committee concludes:

**Tree removal is best addressed in overlay provisions.**

## **C6.8 Permeability**

### **What is the issue?**

It was submitted that there should be the ability to vary the permeability standard.

### **What do the zones say?**

The zones do not provide for variation to Standard A6 or Standard B9 which are:

*At least 20 per cent of the site should not be covered by impervious surfaces.*

### **Submissions**

It was submitted that the permeability standard should be able to varied.

### **Discussion**

The Advisory Committee has recommended that the ability to vary landscaping requirements be included, and the zones allow for variation in private open space. These changes might be circumvented if the additional open space is simply concreted over.

The Advisory Committee recommends:

**Include the ability to vary the permeability standard.**

## **C7. Height**

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The strategic issues related to height are discussed in section 7.1. This section discusses the more technical issues.

### **C7.1 Metres or storeys?**

#### **What is the issue?**

There is concern that height is expressed in both metres and storeys. Submissions suggest that it be specified only in metres.

#### **What do the zones say?**

The term 'height' is defined as height above natural ground level and this applies whether it is measured in metres or storeys even though the definition of 'storey' includes a basement. This is hardly conducive to clear drafting or easy interpretation.

The three zones adopt reference to both metres and storeys in the control. The current Residential 3 Zone and Clause 55.03-2 use metres only. Many local provisions use storeys or a combination of metres and storeys.

#### **Submissions**

Banyule (16), Ararat (28) and others recommended that references to 'storeys' be deleted.

#### **Discussion**

There has been ongoing debate about whether heights should be expressed in metres or storeys. Part of this debate stems from the fact that a different floor to ceiling height might be appropriate in different circumstances, depending on the use or the built form context of the area in which a development is proposed.

In some ways the issues over height versus storeys is analogous to the issue of density. In the same way that it is the bulk of a development that is important, not the number of dwellings it is divided into internally, it is the physical height of the building that is important, not the number of internal levels. It is the overall impact of the development that counts, and this

impact is determined by its physical height – the height in metres – not how many floors are included in the building – the height in storeys.

In August 1998 an Advisory Committee considered the proposal by Monash City Council to vary to the *Good Design Guide* imposing a two storey height limit with discretion for higher in Residential 2 and other areas. That Advisory Committee found:

*In general, controls for building envelopes have moved away from specifying limits on the number of storeys. Such limits are an imprecise way of indicating preferred built form outcomes. For example, the overall heights of several two storey buildings can vary considerably, depending on factors such as ceiling height, roof shape and relationship to ground level. The design treatment can radically affect how tall and dominating buildings with the same number of storeys appear to be. ... Restrictions on number of storeys can also limit effective use of sloping sites or create problems where there are cross slopes.*

The provisions of Clause 55.03-2 use metres rather than storeys to measure building height. However, more recent panels have supported the use of 'storeys' or a combination of storeys and metres.

The Advisory Committee recommends:

**Refer to the heights in all zones in metres only.**

## **C7.2 Should there be height exemptions?**

### **What is the issue?**

Concern was expressed that the proposed height limits would:

- limit domestic services and lift overruns.
- apply to architectural features, poles, tower elements etc.
- complicate issues of access, grades and inundation.

### **What do the zones say?**

Height is defined as:

*The vertical distance from natural ground level to the roof or parapet at any point.*

Clause 62.02-2 states:

*Any requirement in this scheme relating to the construction of a building or the construction or carrying out of works does not apply to:*

- *Domestic services normal to a dwelling.*
- *A rainwater tank with a capacity of not more than 4500 litres.*
- *A television antenna.*
- *A flagpole.*

'Domestic services normal to a dwelling' are defined as:

*A domestic appliance or apparatus that is normal to and services a dwelling. It includes disabled access ramps and handrails, an air conditioner, cooling or heating system, a hot water service, a solar energy system, security systems and cameras, shade sails, a barbeque, downpipes and flues, a skylight, security screens, and the like.*

The exemptions in Clause 62.02-2 would apply.

### **Submissions**

Many submissions suggested that there should be exemptions to the height controls for matters such as architectural features and services. Many councils provided examples of existing height controls within their planning schemes which include such exemptions.

It was questioned whether the height limit would apply to domestic services normal to a dwelling (as defined in Clause 72) (231).

### **Discussion**

Many Panels have supported exemptions for architectural features, building services, radio antenna and the like. Design Development Overlay 1 Port Phillip states:

*Architectural features such as domes, towers, masts and building services do not exceed the maximum height by more than 4 metres and do not exceed 10% of the gross floor area of the top building level, except for DDO1-5.*

The Advisory Committee considers that the inclusion of similar exemptions in the zones would be appropriate to achieve appropriate urban design.

Some services and building infrastructure are exempt under Clause 62.02 but others are not. The Advisory Committee considers that the extent of exemptions should be made clear in the zones.

The Advisory Committee recommends:

**Exempt architectural features, building services and infrastructure equipment from the height controls.**

### **C7.3 Application of height controls to non-residential land uses**

#### **What is the issue?**

Concern was expressed that the height limit should not apply to community uses, such as churches and schools and other non-accommodation uses.

#### **What do the zones say?**

The existing Residential 3 Zone height controls only apply to dwellings and residential buildings not to non-residential land uses.

In the new zones, the proposed height controls would apply to all land uses.

Clause 52.40 provides exemptions for government funded educational facilities. It includes exemptions for:

- *buildings and works that are set back 20 metres or more from a property boundary where the development does not exceed 12 metres in height.*

#### **Submissions**

Several submissions were concerned about the impact of the proposed height controls on schools and other community uses.

#### **Discussion**

The existing height controls within the Residential 3 Zone only apply to dwellings and residential buildings. The Advisory Committee accepts the arguments that in many cases it will be appropriate for schools and other non-residential buildings to exceed the specified height limits.

The Advisory Committee recommends:

**Amend the height provisions so they only apply to dwellings or residential buildings.**

## **C7.4 Interface and transition considerations**

### **What is the issue?**

The transition in height at the interface between the new zones and other zones needs to be considered. Interface issues where the Substantial Change Zone meets the Incremental Change Zone or Limited Change Zone in particular needs to be addressed.

### **What do the zones say?**

There are no explicit provisions dealing with interface issues.

### **Submissions**

Orange (96), West of Elgar Residents Association (233) and others submitted that there needs to be a transition between higher density and conventional density. Yarra (220) sought the ability to specify a lower height in the Substantial Change Zone next to lower scale residential development.

### **Discussion**

Many existing overlay provisions such as the Design Development Overlay 8 in Manningham and Design Development Overlay 4 in Moonee Valley address interface areas through the use of design objectives or decision guidelines. Other schemes use differing height controls at interface areas. In addition the Business 1 Zone decision guidelines specifically address interface with residential areas.

The Advisory Committee considers that there is no reason that the schedules could not specify preferred heights for transitional areas.

The Advisory Committee recommends:

**Include the ability to introduce transitional heights in the new zones in the schedules where they are justified.**

**Include zone interface as a consideration in the decision guidelines of the Substantial Change Zone.**

## C7.5 Relating height to lot size

### What is the issue?

It was submitted that height should be related to lot size with taller buildings permitted on larger lots.

### What do the zones say?

Height is not explicitly related to lot size.

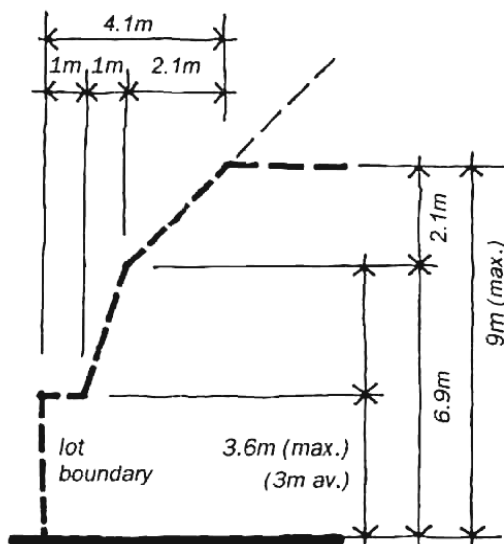
### Submissions

Manningham Design Development Overlay 8 has a lesser height limit where a minimum lot size is not met (seeking site consolidation).

### Discussion

In a sense, the maximum height that can be achieved is related to the lot dimensions, because setback requirements need to be met. The following figure shows this setback. However Clause 55 does not apply to buildings of four or more storeys.

### Setback controls in ResCode



It is not clear why the height of the building should relate to lot size as a general principle, setting aside site consolidation. While this might be important for some building forms, such as buildings in landscaped grounds, it will not be applicable where the design outcome is a solid street wall of



buildings built to boundaries. The Advisory Committee has already recommended that flexibility is needed when setting new height standards.

The Advisory Committee concludes:

**There is no compelling urban design or neighbourhood character reason to relate height to lot size.**

## **C7.6 Height exemptions for Development Plan Overlays and Precinct Structure Plans**

### **What is the issue?**

It was submitted that where a development plan under a Development Plan Overlay or a Precinct Structure Plan specified a different height, these should apply.

### **Submissions**

A number of submissions sought clarity as to how the height controls would interact with approved Development Plans, Incorporated Plans or Precinct Structure Plans.

### **Discussion**

An approved Development Plan is not an incorporated part of the scheme and so cannot override requirements of the scheme unless the zones explicitly refer to the Development Plan.

The mandatory and inflexible nature of the proposed height controls may work against more integrated planning approaches, such as Development Plans and Precinct Structure Plans

The Advisory Committee recommends:

**Ensure any height control in an approved Development Plan, Incorporated Plan, Precinct Structure Plan or overlay takes precedence over the height limit in a zone or schedule.**

## **C8. Other issues**

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### **C8.1 Relationship to covenants**

#### **What is the issue?**

The extent to which a private planning treaty (such as a single dwelling covenant) could undermine public planning policy of urban consolidation is a concern. Many submitters were confused about the effect of the new zones on areas covered by existing covenants.

#### **What do the zones say?**

The zones do not address restrictive covenants.

#### **Submissions**

Boroondara (234), Eaglemont Neighbourhood Conservation Association (137) and Rowan Harrison (148) submitted that the Limited Change Zone should apply to areas affected by single dwelling covenants.

Harrison (148) also submitted that areas of private parkland in some subdivisions should be recognised in the zones.

The GAA advised that covenants are commonly applied to residential land in the growth areas. These covenants are often complex documents covering a range of design issues. Kingston also noted that covenants exist in many of its newer estates.

#### **Discussion**

Restrictive Covenants under the *Subdivision Act 1988* are generally private agreements. However, the planning system becomes involved when they are sought to be removed or varied.

There are three ways to remove or vary a restrictive covenant:

- by application to the Supreme Court;
- by a planning permit application; or
- by way of a planning scheme amendment.

Applications to the Supreme Court and permit applications are subject to a range of statutorily prescribed tests.

Section 60 of the *Planning and Environment Act 1987* states:

- (2) *The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer —*
  - (a) *financial loss; or*
  - (b) *loss of amenity; or*
  - (c) *loss arising from change to the character of the neighbourhood; or*
  - (d) *any other material detriment —**as a consequence of the removal or variation of the restriction.*
- (4) *Subsection (2) does not apply to any restriction which was —*
  - (a) *registered under the Subdivision Act 1988; or*
  - (b) *lodged for registration or recording under the Transfer of Land Act 1958; or*
  - (c) *created —**before 25 June 1991.*
- (5) *The responsible authority must not grant a permit which allows the removal or variation of a restriction referred to in subsection (4) unless it is satisfied that —*
  - (a) *the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and*
  - (b) *if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.*

The 'new' perceived detriment tests set out in section 60(5) of the Act do not apply to covenants before 25 June 1991. This provides more flexibility for recent covenants.

There are no specific tests for a planning scheme amendment that would authorise the removal of a covenant.

A number of Panels have considered submissions on the appropriate test or criteria that should be adopted in determining whether or not to recommend that the Planning Authority should adopt an amendment that would have the effect of allowing the removal or variation of covenant.

The Panel for the combined planning permit application and amendment to the Mornington Peninsula Planning Scheme (C46) considered this question, and reviewed a number of earlier Panel reports. In its report, the Panel concluded that the principles or criteria for considering an amendment that would enable the variation for removal of a restrictive covenant are as follows:

*First, the Panel should be satisfied that the Amendment would further the objectives of planning in Victoria. The Panel must have regard to the Minister's Directions, the Planning Provisions, MSS, strategic plans, policy statements, codes or guidelines in the Scheme, and significant effects the Amendment might have on the environment, or which the environment might have on any use or development envisaged in the Amendment.*

*Second, the Panel should consider the interests of affected parties, including the beneficiaries of the covenant.*

*Third, the Panel should consider whether the removal or variation of the covenant would enable a use or development that complies with the Planning Scheme.*

*Finally, the Panel should balance conflicting policy objectives in favour of net community benefit and sustainable development. If the Panel concludes that there will be a net community benefit and sustainable development it should recommend the variation or removal of the covenant.*

Kingston (38) submitted that not applying a Limited Change Zone would give rise to an incorrect perception of the amount of growth potential in an area. The Advisory Committee recognises that it is not easy to vary or remove restrictive covenants by way of a planning permit application in most cases.

The Advisory Committee does not see that the presence of restrictive covenants in itself should automatically mean that the Limited Change Zone is applied, because in some cases the best approach would be to remove the

covenants. This was done by Amendment C72 to the Manningham Planning Scheme to facilitate higher density development near Doncaster Hill.

The correct zone should be guided by what planning policy says about an area, not by private agreements.

The Advisory Committee recommends:

**Avoid the automatic application of the Limited Change Zone to areas subject to a single dwelling covenant.**

## **C8.2 Existing Use rights**

### **What is the issue?**

It was submitted that Clause 63 of the VPP (relating to existing use rights) is sometimes difficult to reconcile with the standard provision in all residential zones that a dwelling is an as-of-right use; and that development controls only apply to Section 2 uses (See Clause 32.01-5).

### **Discussion**

Clause 63 establishes when an existing use right applies to land. Such a right is established if any of the following apply:

- The use was lawfully carried out before the approval date.
- A permit for the use had been granted immediately before the approval date and the use commences before the permit expires.
- A permit for the use has been granted under Clause 63.08 and the use commences before the permit expires.
- Proof of continuous use for 15 years is established under Clause 63.11.

Clause 63.04 notes that an existing use in Section 1 of the Zone may continue, provided that any condition that applies to it continues to be met. It was noted that this provision is problematic given the changeable nature of the 'use' provisions pertaining to dwellings over the last fifty years or so.

While the term 'dwelling' is now a Section 1 use in all zones, this has not always been the case. Moreover, the term 'dwelling' formerly went by a variety of other defined terms in various planning schemes including terms such as detached house, attached house, flat, apartment etc. It is understood that as recently as the mid nineties, many schemes included 'dwellings' (in some form) as Section 2 uses. The problem arises in dealing with a

completed development of a formerly Section 2 use that now has the protection of Section 1.

It is understood that this is not the first time that the precise wording of this clause has caused difficulties and it is suggested that DPCD review the clause in the context of these and other comments.

The Advisory Committee recommends:

**Review Clause 63 (Existing use rights) to clarify the status of existing uses especially multi-unit developments that were developed prior to the introduction of the Good Design Guide.**

### **C8.3 Application requirements and decision guidelines**

#### **What is the issue?**

The Limited Change Zone stipulates application requirements and decision guidelines for 'Use' applications and 'Buildings and works' applications, when the two other zones do not.

The zones also repeatedly set out decision guidelines that the responsible authority consider the SPPF and LPPF.

#### **What do the zones say?**

The Limited Change Zone includes application requirements and decision guidelines for 'Use' and 'Buildings and works' applications under *Clause 32.06-3, Use of land* and *Clause 32.06-8, Buildings and works associated with a Section 2 use*. The same provisions were not included in the Substantial Change Zone or the Incremental Change Zone.

The decision guidelines in the proposed zones (and all existing VPP zones) all start with a requirement that the responsible authority consider the SPPF and LPPF, while cross referencing to Clause 65 – which also requires the consideration of the SPPF and LPPF. The zones each commence with a purpose to implement the SPPF and LPPF and conclude with a 'Note' that references the SPPF and LPPF.

#### **Submissions**

Various submitters commented on the complicated nature of the zones, seeking a more simplified form for the zones.

## Discussion

Appendix C2.3 – *Non-residential uses in the residential zones*, discusses the 'Use' application requirements and decision guidelines in greater detail, recommending a Particular Provision be developed to address these applications and that the application requirements and decision guidelines for 'Use' be deleted from the Limited Change Zone. In addition, the Advisory Committee considers the application requirements and decision guidelines of *Clause 32.06-8, Buildings and works associated with a Section 2 use* in the Limited Change Zone should be deleted.

If the above application requirements and decision guidelines were to remain in the Limited Change Zone, then there is argument that they should also be applied in the Substantial and Incremental Change Zones. The same level of information should be required for an application under any one of the zones; and the same considerations for amenity etc. would apply in each of the zones. However this will result in a lot of repetition within each zone without necessarily clarifying decision making, given their substance.

Since the subdivision, single dwelling and multi dwelling/residential building provisions in the three zones also include separate decision guidelines, the Advisory Committee finds merit in providing a consolidated list of decision guidelines for each zone to address the various application types. After referencing Clause 65, there is no need to repeat decision guidelines already specified in Clause 65.

The need to consider the SPPF and LPPF is a well established practice in the Victorian planning system, the Advisory Committee sees no need to repeat this through decision guidelines in the zones. While not listed as a specific recommendation, the Advisory Committee has deleted the many references to the SPPF and LPPF throughout the zone provisions.

In keeping with the movement towards rationalising planning scheme provisions, the Advisory Committee considers that a clean up of the decision guidelines in the proposed zones would help reduce the bulk of the zones and would avoid repetition.

Consideration could be given to deleting the separate decision guidelines in the zones and consolidating these into a single grouping of decision guidelines to address the various application types.

The Advisory Committee recommends:

**Delete the application requirements and decision guidelines relating to Buildings and works associated with a Section 2 use from the Limited Change Zone.**



## **D Recommended revisions to the zones**

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The Advisory Committee has recommended a number of changes to the exhibited zones. These are shown in detail in this appendix with additions in underlined text and deletions in ~~striketrough~~ text.

**32.01 INCREMENTAL CHANGE RESIDENTIAL 1 – RESIDENTIAL DIVERSITY ZONE**

Shown on the planning scheme map as **R1Z**.

**Purpose**

To implement the State Planning Policy Framework and the Local Planning Policy Framework ~~including the Municipal Strategic Statement and local planning policies.~~

To provide for a diversity of residential development at a range of densities with a variety of dwellings types ~~to meet the housing needs of all households.~~

To encourage ~~residential~~ development that respects the neighbourhood character.

To manage ~~residential~~ development to achieve neighbourhood character and design objectives specified in a schedule to this zone.

In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.

**32.01-1 Neighbourhood character and design objectives**

A schedule to this zone may contain neighbourhood character and design objectives to be achieved for the area affected by the schedule.

**32.01-2 Table of uses**

**Section 1 - Permit not required**

USE	CONDITION
Animal keeping (other than Animal boarding)	Must be no more than 2 animals.
<del>Apiculture</del>	<del>Must meet the requirements of the Apiary Code of Practice, May 1997.</del>
Bed and breakfast	No more than 6 persons may be accommodated away from their normal place of residence. At least 1 car parking space must be provided for each 2 persons able to be accommodated away from their normal place of residence.
<del>Carnival</del>	<del>Must meet the requirements of A ‘Good Neighbour’ Code of Practice for a Circus or Carnival, October 1997.</del>
<del>Circus</del>	<del>Must meet the requirements of A ‘Good Neighbour’ Code of Practice for a Circus or Carnival, October 1997.</del>
Dependent person’s unit	Must be the only dependent person’s unit on the lot.

USE	CONDITION
Dwelling (other than Bed and breakfast) Home occupation <del>Informal outdoor recreation</del> <del>Mineral exploration</del>	
<del>Mining</del>	<del>Must meet the requirements of Clause 52.08 2.</del>
<del>Minor utility installation</del> <del>Natural systems</del>	
Place of worship	Must be no social or recreation activities. The gross floor area of all buildings must not exceed 180 square metres. The site must not exceed 1200 square metres. The site must adjoin, or have access to, a road in a Road Zone.
<del>Railway</del> Residential aged care facility <del>Road</del>	
<del>Search for stone</del>	<del>Must not be costeaning or bulk sampling.</del>
Telecommunications facility	Buildings and works must meet the requirements of Clause 52.19.
<a href="#">Any use listed at Clause [no.]</a> <a href="#">Any use listed at Clause [no.] if the condition is not met.</a> <a href="#">Any use listed at Clause 62.01</a>	
<del>Tramway</del>	

## Section 2 - Permit required

USE	CONDITION
Accommodation (other than Dependent person's unit, Dwelling and Residential aged care facility) Agriculture (other than Animal keeping, Animal training, Apiculture, Horse stables, and Intensive animal husbandry)	
Animal keeping (other than Animal boarding) – if the Section 1 condition is not met	Must be no more than 5 animals.
Car park	Must be used in conjunction with another use in Section 1 or 2.
Car wash	The site must adjoin, or have access to, a road in a Road Zone.

USE	CONDITION
<b>Community market</b>	
<b>Convenience restaurant</b>	The site must adjoin, or have access to, a road in a Road Zone.
<b>Convenience shop</b>	The leasable floor area must not exceed 80 square metres.
<b>Food and drink premises (other than Convenience restaurant and Take away food premises)</b>	
<b>Leisure and recreation (other than Informal outdoor recreation and Motor racing track)</b>	
<b>Medical centre</b>	
<del><b>Mineral, stone, or soil extraction (other than Extractive industry, Mineral exploration, Mining, and Search for stone)</b></del>	
<b>Place of assembly (other than Amusement parlour, Carnival, Circus, Nightclub, and Place of worship)</b>	
<b>Plant nursery</b>	
<b>Service station</b>	<p>The site must either:</p> <ul style="list-style-type: none"> <li>▪ Adjoin a business zone or industrial zone.</li> <li>▪ Adjoin, or have access to, a road in a Road Zone.</li> </ul> <p>The site must not exceed either:</p> <ul style="list-style-type: none"> <li>▪ 3000 square metres.</li> <li>▪ 3600 square metres if it adjoins on two boundaries a road in a Road Zone.</li> </ul>
<b>Store</b>	Must be in a building, not a dwelling, and used to store equipment, goods, or motor vehicles used in conjunction with the occupation of a resident of a dwelling on the lot.
<b>Take away food premises</b>	The site must adjoin, or have access to, a road in a Road Zone.
<b>Utility installation (other than Minor utility installation and Telecommunications facility)</b>	
<a href="#"><u>Any use listed at Clause [no.] if the condition is not met</u></a>	
<b>Any other use not in Section 1 or 3</b>	

**Section 3 - Prohibited**

**USE**

Amusement parlour  
Animal boarding  
Animal training  
Brothel  
Cinema based entertainment facility  
Extractive industry  
Horse stables  
Industry (other than Car wash)  
Intensive animal husbandry  
Motor racing track  
Nightclub  
Office (other than Medical centre)  
Retail premises (other than Community market, Convenience shop, Food and drink premises, and Plant nursery)  
Saleyard  
Transport terminal  
Warehouse (other than Store)

**32.01-3 Subdivision**

**Permit requirement**

A permit is required to subdivide land.

An application to subdivide land, other than an application to subdivide land into lots each containing an existing dwelling or car parking space, must meet the requirements of Clause 56 and:

- Must meet all of the objectives included in the clauses specified in the following table.
- Should meet all of the standards included in the clauses specified in the following table.

<b>Class of subdivision</b>	<b>Objectives and standards to be met</b>
60 or more lots	All except Clause 56.03-5.
16 – 59 lots	All except Clauses 56.03-1 to 56.03-3, 56.03-5, 56.06-1 and 56.06-3.
3 – 15 lots	All except Clauses 56.02-1, 56.03-1 to 56.03-4, 56.05-2, 56.06-1, 56.06-3 and 56.06-6.
2 lots	Clauses 56.03-5, 56.04-2, 56.04-3, 56.04-5, 56.06-8 to 56.09-2.

**Exemption from notice and review**

An application to subdivide land into lots each containing an existing dwelling or car parking space is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

### Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

~~▪ The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.~~

- The neighbourhood character and design objectives specified in a schedule to this zone.
- The objectives and standards of Clause 56.

## 32.01-4 Construction and extension of one dwelling on a lot

### Permit requirement

A permit is required to construct or extend one dwelling on:

- A lot of less than 300 square metres.
- A lot of between 300 square metres and 500 square metres if specified in the schedule to this zone.

A permit is required to construct or extend a front fence within 3 metres of a street if:

- The fence is associated with one dwelling on:
  - A lot of less than 300 square metres, or
  - A lot of between 300 and 500 square metres if specified in a schedule to this zone, and
- The fence exceeds the maximum height specified in Clause 54.06-2.

A development must meet the requirements of Clause 54.

### No permit required

No permit is required to:

- Construct or carry out works normal to a dwelling.
- Construct or extend an out-building (other than a garage or carport) on a lot provided the gross floor area of the out-building does not exceed 10 square metres and the maximum building height is not more than 3 metres above ground level.

### Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

~~▪ The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.~~

- The neighbourhood character and design objectives specified in a schedule to this zone.
- The objectives, standards and decision guidelines of Clause 54.

**32.01-5 Construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings**

**Permit requirement**

A permit is required to:

- Construct a dwelling if there is at least one dwelling existing on the lot.
- Construct two or more dwellings on a lot.
- Extend a dwelling if there are two or more dwellings on the lot.
- Construct or extend a dwelling if it is on common property.
- Construct or extend a residential building.

A permit is required to construct or extend a front fence within 3 metres of a street if:

- The fence is associated with 2 or more dwellings on a lot or a residential building, and
- The fence exceeds the maximum height specified in Clause 55.06-2.

A development must meet the requirements of Clause 55. This does not apply to a development of four or more storeys, excluding a basement.

A permit is not required to construct one dependent person's unit on a lot.

**Decision guidelines**

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

~~▪ The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.~~

- The neighbourhood character and design objectives specified in a schedule to this zone.
- For a development of three storeys or less, excluding a basement, the objectives, standards and decision guidelines of Clause 55.
- For a development of four or more storeys, excluding a basement, the Design Guidelines for Higher Density Residential Development (Department of Sustainability and Environment 2004).

**32.01-6 Requirements of Clause 54 and Clause 55**

The schedule to this zone may specify the requirements of:

- Standards A3, A5, [A6](#), [A8](#), [A9](#), A10, A11, A17 and A20 of Clause 54 of this scheme.
- Standards B6, B8, [B9](#), [B13](#), [B16](#), B17, B18, B28 and B32 of Clause 55 of this scheme.

If a requirement is not specified in the schedule to this zone, the requirement set out in the relevant standard of Clause 54 or Clause 55 applies.

**32.01-7 Buildings and works associated with a Section 2 use**

A permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 32.01-2.

**32.01-8 Building height**

The height of a building [used for the purposes of a dwelling or residential building](#) must not exceed a building height specified in a schedule to this zone. If no building height is specified, the height of a building must not exceed 9 metres (~~3 storeys~~) unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, in which case the building height must not exceed 10 metres.

This does not apply to:

- An extension of an existing building that exceeds the specified building height, provided that the extension does not exceed the existing building height.
- A building which exceeds the specified building height for which a valid planning or building permit was in effect prior to the introduction of this provision.
- [Architectural features, building services, infrastructure equipment and buildings and works listed at Clause 62.02-1.](#)

[A permit may be granted to construct buildings and works in excess of the height specified in this clause or in a schedule to this zone.](#)

[These requirements do not apply if a height is specified in an overlay, approved development plan, incorporated plan or precinct structure plan.](#)

**32.01-9 Exemption from notice and review**

A schedule to this zone may specify that an application is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

**32.01-10 Advertising signs**

Advertising sign requirements are at Clause 52.05. This zone is in Category 3.

*Notes:* Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of land.

*Check whether an overlay also applies to the land.*

*Other requirements may also apply. These can be found at Particular Provisions.*



**SCHEDULE TO THE ~~INCREMENTAL CHANGE~~ RESIDENTIAL 1 – RESIDENTIAL DIVERSITY ZONE**

Shown on the planning scheme map as R1Z (show number if more than one schedule)

**Name of area**

**1.0 Neighbourhood character and design objectives**

- *The objectives for the ~~precinct~~ area are specified here.*

**2.0 Building height**

- *The schedule may specify a ~~maximum~~ height limit for the area covered by the schedule, for sub-precincts within the schedule area or for specified development contexts ~~greater or lower than 9 metres (3 storeys).~~*

**3.0 Exemption from notice and review**

- *Any exemptions are specified here.*

**4.0 Permit requirement for one dwelling on a lot**

**Is a permit required to construct or extend one dwelling on a lot of between 300 square metres and 500 square metres?**

**5.0 Requirements of Clause 54 and Clause 55**

*The table may specify a requirement for the area covered by the schedule, for sub-precincts within the schedule area or for specified development contexts.*

	<b>Clause 54 and Clause 55 Standard</b>	<b>Requirement</b>
<b>Minimum street setback</b>	Standard A3 and Standard B6	<i>The schedule may specify a different setback.</i>
<b>Site coverage</b>	Standard A5 and Standard B8	<i>The schedule may specify a different site coverage.</i>
<b><u>Permeability</u></b>	<u>Standard A6 and Standard B9</u>	<i><u>The schedule may specify a different percentage of impervious surface.</u></i>
<b><u>Significant trees</u></b>	<u>Standard A8</u>	<i><u>The schedule may specify a different standard.</u></i>
<b><u>Landscaping</u></b>	<u>Standard B13</u>	<i><u>The schedule may specify a different standard.</u></i>
<b>Side and rear setbacks</b>	Standard A10 and Standard B17	<i>The schedule may specify different side and rear setbacks.</i>

	<b>Clause 54 and Clause 55 Standard</b>	<b>Requirement</b>
<b>Walls on boundaries</b>	Standard A11 and Standard B18	<i>The schedule may specify a different length for a wall on a boundary.</i>
<b>Private open space</b>	Standard A17	<i>The schedule may specify a different area or dimension of private open space.</i>
	Standard B28	<i>The schedule may specify a different area or dimension of private open space.</i>
<b>Front fence height</b>	Standard A20 and Standard B32	<i>The schedule may specify a different front fence height.</i>

**32.02**      **~~SUBSTANTIAL CHANGE~~ RESIDENTIAL 2 – HIGHER DENSITY ZONE**

Shown on the planning scheme map as R2Z.

**Purpose**

To implement the State Planning Policy Framework and the Local Planning Policy Framework, ~~including the Municipal Strategic Statement and local planning policies.~~

To deliver housing at higher densities ~~in locations that offer good access to services and transport including activity centres and strategic redevelopment sites.~~

To manage ~~residential~~ development to achieve the ~~neighbourhood character and~~ design objectives and built form outcomes specified in a schedule to this zone.

In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.

**32.02-1**      ~~Neighbourhood character and~~ Design objectives and built form outcomes

A schedule to this zone ~~must~~ may contain the ~~neighbourhood character and~~ design objectives and built form outcomes to be achieved for the area affected by the schedule.

**32.02-2**      **Table of uses**

**Section 1 - Permit not required**

USE	CONDITION
Animal keeping (other than Animal boarding)	Must be no more than 2 animals.
<del>Apiculture</del>	<del>Must meet the requirements of the Apiary Code of Practice, May 1997.</del>
Bed and breakfast	No more than 6 persons may be accommodated away from their normal place of residence. At least 1 car parking space must be provided for each 2 persons able to be accommodated away from their normal place of residence.
<del>Carnival</del>	<del>Must meet the requirements of A 'Good Neighbour' Code of Practice for a Circus or Carnival, October 1997.</del>
<del>Circus</del>	<del>Must meet the requirements of A 'Good Neighbour' Code of Practice for a Circus or Carnival, October 1997.</del>
Dependent person's unit	Must be the only dependent person's unit on the lot.
Dwelling (other than Bed and breakfast) Home occupation	
<del>Informal outdoor recreation</del> <del>Mineral exploration</del>	

USE	CONDITION
<del>Mining</del>	<del>Must meet the requirements of Clause 52.08-2.</del>
<del>Minor utility installation</del>	
<del>Natural systems</del>	
Place of worship	<p>Must be no social or recreation activities.</p> <p>The gross floor area of all buildings must not exceed 180 square metres.</p> <p>The site must not exceed 1200 square metres.</p> <p>The site must adjoin, or have access to, a road in a Road Zone.</p>
<del>Railway</del>	
Residential aged care facility	
<del>Road</del>	
<del>Search for stone</del>	<del>Must not be costeaning or bulk sampling.</del>
Telecommunications facility	Buildings and works must meet the requirements of Clause 52.19.
<a href="#">Any use listed at Clause [no.]</a>	
<a href="#">Any use listed at Clause [no.] if the condition is not met.</a>	
<a href="#">Any use listed at Clause 62.01</a>	
<del>Tramway</del>	

Section 2 – Permit required

USE	CONDITION
Accommodation (other than Dependent person's unit, Dwelling and Residential aged care facility)	
Agriculture (other than Animal keeping, Animal training, Apiculture, Horse stables, and Intensive animal husbandry)	
Animal keeping (other than Animal boarding) – if the Section 1 condition is not met	Must be no more than 5 animals.
Car park	Must be used in conjunction with another use in Section 1 or 2.
Car wash	The site must adjoin, or have access to, a road in a Road Zone.
Community market	
Convenience restaurant	<del>The site must adjoin, or have access to, a road in a Road Zone.</del>

USE	CONDITION
Convenience shop	<del>The leasable floor area must not exceed 80 square metres.</del>
<b>Food and drink premises (other than Convenience restaurant and Take away food premises)</b> <b>Leisure and recreation (other than Informal outdoor recreation and Motor racing track)</b> <b>Medical centre</b>	
<del>Mineral, stone, or soil extraction (other than Extractive industry, Mineral exploration, Mining, and Search for stone)</del>	
Office ( <a href="#">other than Medical centre</a> )	The leasable floor area must not exceed 100 square metres. <a href="#">Must be located on the ground floor of a multi-level building which is used for accommodation on the upper levels.</a>
<b>Place of assembly (other than Amusement parlour, Carnival, Circus, Nightclub, and Place of worship)</b> <b>Plant nursery</b>	
Service station	The site must either: <ul style="list-style-type: none"> <li>▪ Adjoin a business zone or industrial zone.</li> <li>▪ Adjoin, or have access to, a road in a Road Zone.</li> </ul> The site must not exceed either: <ul style="list-style-type: none"> <li>▪ 3000 square metres.</li> <li>▪ 3600 square metres if it adjoins on two boundaries a road in a Road Zone.</li> </ul>
Store	Must be in a building, not a dwelling, and used to store equipment, goods, or motor vehicles used in conjunction with the occupation of a resident of a dwelling on the lot.
Take away food premises	<del>The site must adjoin, or have access to, a road in a Road Zone.</del>
<b>Utility installation (other than Minor utility installation and Telecommunications facility)</b>	
<a href="#">Any use listed at Clause [no.] if the condition is not met</a>	
Any other use not in Section 1 or 3	

**Section 3 – Prohibited**

**USE**

- Amusement parlour
- Animal boarding
- Animal training
- Brothel
- Cinema based entertainment facility
- Extractive industry
- Horse stables
- Industry (other than Car wash)
- Intensive animal husbandry
- Motor racing track
- Nightclub
- Retail premises (other than Community market, Convenience shop, Food and drink premises, and Plant nursery)
- Saleyard
- Transport terminal
- Warehouse (other than Store)

**32.02-3 Subdivision**

**Permit requirement**

A permit is required to subdivide land.

An application to subdivide land, other than an application to subdivide land into lots each containing an existing dwelling or car parking space, must meet the requirements of Clause 56 and:

- Must meet all of the objectives included in the clauses specified in the following table.
- Should meet all of the standards included in the clauses specified in the following table.

Class of subdivision	Objectives and standards to be met
60 or more lots	All except Clause 56.03-5.
16 – 59 lots	All except Clauses 56.03-1 to 56.03-3, 56.03-5, 56.06-1 and 56.06-3.
3 – 15 lots	All except Clauses 56.02-1, 56.03-1 to 56.03-4, 56.05-2, 56.06-1, 56.06-3 and 56.06-6.
2 lots	Clauses 56.03-5, 56.04-2, 56.04-3, 56.04-5, 56.06-8 to 56.09-2.

**Exemption from notice and review**

An application [to subdivide land](#) is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

### Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- ~~The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.~~
- The ~~neighbourhood character and~~ design objectives [and built form outcomes](#) specified in a schedule to this zone.
- The objectives and standards of Clause 56.

## 32.02-4 Construction and extension of one dwelling on a lot

### Permit requirement

A permit is required to construct or extend one dwelling on a lot of less than 300 square metres.

A permit is required to construct or extend a front fence within 3 metres of a street if:

- The fence is associated with one dwelling on a lot less than 300 square metres, and:
- The fence exceeds the maximum height specified in Clause 54.06-2.

A development must meet the requirements of Clause 54.

### No permit required

No permit is required to:

- Construct or carry out works normal to a dwelling.
- Construct or extend an out-building (other than a garage or carport) on a lot provided the gross floor area of the out-building does not exceed 10 square metres and the maximum building height is not more than 3 metres above ground level.

### Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- ~~The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.~~
- The ~~neighbourhood character and~~ design objectives [and built form outcomes](#) specified in a schedule to this zone.
- The objectives, standards and decision guidelines of Clause 54.

**32.02-5 Construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings**

**Permit requirement**

A permit is required to:

- Construct a dwelling if there is at least one dwelling existing on the lot.
- Construct two or more dwellings on a lot.
- Extend a dwelling if there are two or more dwellings on the lot.
- Construct or extend a dwelling if it is on common property.
- Construct or extend a residential building.

A permit is required to construct or extend a front fence within 3 metres of a street if:

- The fence is associated with 2 or more dwellings on a lot or a residential building, and
- The fence exceeds the maximum height specified in Clause 55.06-2.

A development must meet the requirements of Clause 55. This does not apply to a development of four or more storeys, excluding a basement.

A permit is not required to construct one dependent person's unit on a lot.

[If design objectives or built form outcomes are specified in the schedule to the zone, Clause 55.02-1 does not apply.](#)

**Decision guidelines**

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- ~~▪ The State Planning Policy Framework and the Local Planning Policy Framework including the Municipal Strategic Statement and local planning policies.~~
- The ~~neighbourhood character and~~ design objectives and built form outcomes specified in a schedule to this zone.
- For a development of three storeys or less, excluding a basement, the objectives, standards and decision guidelines of Clause 55.
- For a development of four or more storeys, excluding a basement, the Design Guidelines for Higher Density Residential Development (Department of Sustainability and Environment 2004).

**32.02-6 Requirements of Clause 54 and Clause 55**

The schedule to this zone may specify the requirements of:

- Standards A3, A5, A6, A8, A9, A10, A11, A17 and A20 of Clause 54 of this scheme.



- Standards B6, B8, [B9, B13, B16](#), B17, B18, B28 and B32 of Clause 55 of this scheme.

If a requirement is not specified in the schedule to this zone, the requirement set out in the relevant standard of Clause 54 or Clause 55 applies.

### **32.02-7 Buildings and works associated with a Section 2 use**

A permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 32.02-2.

### **32.02-8 Building height**

The height of a building [used for the purposes of a dwelling or residential building](#) must not exceed a building height specified in a schedule to this zone. If no building height is specified, the height of a building must not exceed 13.5 metres (~~4 storeys~~) unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, in which case the building height must not exceed 14.5 metres.

This does not apply to:

- An extension of an existing building that exceeds the specified building height provided that the extension does not exceed the existing building height.
- A building which exceeds the specified building height for which a valid planning or building permit was in effect prior to the introduction of this provision.
- [Architectural features, building services, infrastructure equipment and buildings and works listed at Clause 62.02-1.](#)

[A permit may be granted to construct buildings and works in excess of the height specified in this clause or in a schedule to this zone.](#)

[These requirements do not apply if a height is specified in an overlay, approved development plan, incorporated plan or precinct structure plan.](#)

### **32.02-9 Exemption from notice and review**

A schedule to this zone may specify that an application is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

### **32.02-10 Advertising signs**

Advertising sign requirements are at Clause 52.05. This zone is in Category 3.

*Notes:* Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of land.

*Check whether an overlay also applies to the land.*

*Other requirements may also apply. These can be found at Particular Provisions.*

**SCHEDULE TO THE ~~SUBSTANTIAL CHANGE~~ RESIDENTIAL 2 – HIGHER DENSITY ZONE**

Shown on the planning scheme map as R2Z (show number if more than one schedule)

**Name of area**

**1.0 ~~Neighbourhood character and~~ Design objectives and built form outcomes**

- *The objectives for the ~~precinct~~ area are specified here.*

**2.0 Building height**

- *The schedule may specify a ~~maximum~~ height limit for the area covered by the schedule, for sub-precincts within the schedule area or for specified development contexts ~~greater than 13.5 metres (4 storeys).~~*
- *Any height limit must comply with Ministerial Direction No. [number]*

**3.0 Exemption from notice and review**

- *Any exemptions are specified here.*

**4.0 Requirements of Clause 54 and Clause 55**

*The table may specify a requirement for the area covered by the schedule, for sub-precincts within the schedule area or for specified development contexts.*

	<b>Clause 54 and Clause 55 Standard</b>	<b>Requirement</b>
<b>Minimum street setback</b>	Standard A3 and Standard B6	<i>The schedule may specify a <del>reduced</del> <u>different</u> setback.</i>
<b>Site coverage</b>	Standard A5 and Standard B8	<i>The schedule may specify a <u>different</u> site coverage. <del>greater than 60%</del></i>
<b><u>Permeability</u></b>	<u>Standard A6 and Standard B9</u>	<i><u>The schedule may specify a different percentage of impervious surface.</u></i>
<b><u>Significant trees</u></b>	<u>Standard A8</u>	<i><u>The schedule may specify a different standard.</u></i>
<b><u>Landscaping</u></b>	<u>Standard B13</u>	<i><u>The schedule may specify a different standard.</u></i>
<b>Side and rear setbacks</b>	Standard A10 and Standard B17	<i>The schedule may specify a <del>reduced</del> <u>different</u> side and rear setbacks.</i>
<b>Walls on boundaries</b>	Standard A11 and Standard B18	<i>The schedule may specify a <del>greater</del> <u>different</u> length for a wall on a boundary.</i>

	<b>Clause 54 and Clause 55 Standard</b>	<b>Requirement</b>
<b>Private open space</b>	Standard A17	<i>The schedule may specify a <del>reduced</del> <u>different</u> area or dimension of private open space.</i>
	Standard B28	<i>The schedule may specify a <del>reduced</del> <u>different</u> area or dimension of private open space.</i>
<b>Front fence height</b>	Standard A20 and Standard B32	<i>The schedule may specify a <del>reduced</del> <u>different</u> front fence height.</i>

**32.06 RESIDENTIAL 3 – LIMITED CHANGE ZONE**

Shown on the planning scheme map as **R3Z**.

**Purpose**

To implement the State Planning Policy Framework and the Local Planning ~~Policy Framework, including the Municipal Strategic Statement and local planning policies.~~

To identify neighbourhoods where there are limited opportunities for change due to identified characteristics such as heritage, environmental, landscape or other special values.

~~To ensure residential development protects the neighbourhood character of the area.~~

To manage ~~residential~~ development to achieve neighbourhood character and design objectives specified in a schedule to this zone.

In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.

**32.06-1 Neighbourhood character and design objectives**

A schedule to this zone must contain neighbourhood character and design objectives to be achieved for the area affected by the schedule.

**32.06-2 Table of uses**

**Section 1 - Permit not required**

USE	CONDITION
Animal keeping (other than Animal boarding)	Must be no more than 2 animals.
<del>Apiculture</del>	<del>Must meet the requirements of the Apiary Code of Practice, May 1997.</del>
Bed and breakfast	No more than 6 persons may be accommodated away from their normal place of residence.  At least 1 car parking space must be provided for each 2 persons able to be accommodated away from their normal place of residence.
<del>Carnival</del>	<del>Must meet the requirements of A 'Good Neighbour' Code of Practice for a Circus or Carnival, October 1997.</del>
<del>Circus</del>	<del>Must meet the requirements of A 'Good Neighbour' Code of Practice for a Circus or Carnival, October 1997.</del>
Dependent person's unit	Must be the only dependent person's unit on the lot.

USE	CONDITION
Dwelling (other than Bed and breakfast) Home occupation <del>Informal outdoor recreation</del>	
<del>Mineral exploration</del>	
<del>Mining</del>	<del>Must meet the requirements of Clause 52.08-2.</del>
<del>Minor utility installation</del> <del>Natural systems</del>	
Place of worship	Must be no social or recreation activities. The gross floor area of all buildings must not exceed 180 square metres. The site must not exceed 1200 square metres. The site must adjoin, or have access to, a road in a Road Zone.
<del>Railway</del> Residential aged care facility <del>Road</del>	
<del>Search for stone</del>	<del>Must not be costeaning or bulk sampling.</del>
Telecommunications facility	Buildings and works must meet the requirements of Clause 52.19.
<a href="#">Any use listed at Clause [no.]</a> <a href="#">Any use listed at Clause [no.] if the condition is not met</a> <a href="#">Any use listed at Clause 62.01</a>	
<del>Tramway</del>	

## Section 2 - Permit required

USE	CONDITION
Accommodation (other than Dependent person's unit, Dwelling and Residential aged care facility) Agriculture (other than Animal keeping, Animal training, Apiculture, Horse stables, and Intensive animal husbandry)	
Animal keeping (other than Animal boarding) – if the Section 1 condition is not met	Must be no more than 5 animals.

USE	CONDITION
Car park	Must be used in conjunction with another use in Section 1 or 2.
Car wash	The site must adjoin, or have access to, a road in a Road Zone.
Community market	
Convenience restaurant	The site must adjoin, or have access to, a road in a Road Zone.
Convenience shop	The leasable floor area must not exceed 80 square metres. <del>The site must adjoin, or have access to, a road in a Road Zone.</del>
Food and drink premises (other than Convenience restaurant and Take away food premises)	<del>The site must adjoin, or have access to, a road in a Road Zone.</del>
Leisure and recreation (other than Informal outdoor recreation and Motor racing track)	
Medical centre	
<del>Mineral, stone, or soil extraction (other than Extractive industry, Mineral exploration, Mining, and Search for stone)</del>	<del>The site must adjoin, or have access to, a road in a Road Zone.</del>
Place of assembly (other than Amusement parlour, Carnival, Circus, Nightclub, and Place of worship – if the Section 1 condition is not met)	The site must adjoin, or have access to, a road in a Road Zone.
Plant nursery	
Service station	The site must either: <ul style="list-style-type: none"> <li>Adjoin a business zone or industrial zone.</li> <li>Adjoin, or have access to, a road in a Road Zone.</li> </ul> The site must not exceed either: <ul style="list-style-type: none"> <li>3000 square metres.</li> <li>3600 square metres if it adjoins on two boundaries a road in a Road Zone.</li> </ul>
Store	Must be in a building, not a dwelling, and used to store equipment, goods, or motor vehicles used in conjunction with the occupation of a resident of a dwelling on the lot.
Take away food premises	The site must adjoin, or have access to, a road in a Road Zone.
Utility installation (other than Minor utility installation and Telecommunications facility)	

USE	CONDITION
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[Any use listed at Clause \[no.\] if the condition is not met](#)

Any other use not in Section 1 or 3

### Section 3 - Prohibited

USE
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Amusement parlour

Animal boarding

Animal training

Brothel

Cinema based entertainment facility

Extractive industry

Horse stables

Industry (other than Car wash)

Intensive animal husbandry

Motor racing track

Nightclub

Office (other than Medical centre)

Retail premises (other than Community market, Convenience shop, Food and drink premises, and Plant nursery)

Saleyard

Transport terminal

Warehouse (other than Store)

### ~~32.06-3 Use of land~~

#### ~~Application requirements~~

~~An application to use land must be accompanied by the following information, as appropriate:~~

- ~~▪ The purpose of the use and the types of activities which will be carried out.~~
- ~~▪ The likely effects, if any, on adjoining land, including noise levels, traffic, the hours of delivery and despatch of goods and materials, hours of operation and light spill, solar access and glare.~~

#### ~~Decision guidelines~~

~~Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:~~

- ~~▪ The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.~~
- ~~▪ The neighbourhood character and design objectives specified in a schedule to this zone.~~
- ~~▪ The impact of the use on the amenity of existing dwellings and the surrounding area.~~

~~▪ The effect of traffic to be generated on roads.~~

## 32.06-45 Subdivision

### Permit requirement

A permit is required to subdivide land.

~~Each lot must be at least the area specified for the land in a schedule to this zone.~~

An application to subdivide land, other than an application to subdivide land into lots each containing an existing dwelling or car parking space, must meet the requirements of Clause 56 and:

- Must meet all of the objectives included in the clauses specified in the following table.
- Should meet all of the standards included in the clauses specified in the following table.

Class of subdivision	Objectives and standards to be met
60 or more lots	All except Clause 56.03-5.
16 – 59 lots	All except Clauses 56.03-1 to 56.03-3, 56.03-5, 56.06-1 and 56.06-3.
3 – 15 lots	All except Clauses 56.02-1, 56.03-1 to 56.03-4, 56.05-2, 56.06-1, 56.06-3 and 56.06-6.
2 lots	Clauses 56.03-5, 56.04-2, 56.04-3, 56.04-5, 56.06-8 to 56.09-2.

### Exemption from notice and review

An application to subdivide land into lots each containing an existing dwelling or car parking space is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

### Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

~~▪ The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.~~

- The neighbourhood character and design objectives specified in a schedule to this zone.
- The objectives and standards of Clause 56.



### 32.06-56 Construction and extension of one dwelling on a lot

#### Permit requirement

A permit is required to construct or extend one dwelling on:

- A lot of less than 300 square metres.
- A lot of between 300 square metres and 500 square metres if specified in the schedule to this zone.

A permit is required to construct or extend a front fence within 3 metres of a street if:

- The fence is associated with one dwelling on:
  - A lot of less than 300 square metres, or
  - A lot of between 300 and 500 square metres if specified in a schedule to this zone, and
- The fence exceeds the maximum height specified in Clause 54.06-2.

A development must meet the requirements of Clause 54.

#### No permit required

No permit is required to:

- Construct or carry out works normal to a dwelling.
- Construct or extend an out-building (other than a garage or carport) on a lot provided the gross floor area of the out-building does not exceed 10 square metres and the maximum building height is not more than 3 metres above ground level.

#### Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- ~~▪ The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.~~
- The neighbourhood character and design objectives specified in a schedule to this zone.
- The objectives, standards and decision guidelines of Clause 54.

### 32.06-67 Construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings

#### Permit requirement

A permit is required to:

- Construct a dwelling if there is at least one dwelling existing on the lot.

- Construct two or more dwellings on a lot.
- Extend a dwelling if there are two or more dwellings on the lot.
- Construct or extend a dwelling if it is on common property.
- Construct or extend a residential building.

A permit is required to construct or extend a front fence within 3 metres of a street if:

- The fence is associated with 2 or more dwellings on a lot or a residential building, and
- The fence exceeds the maximum height specified in Clause 55.06-2.

~~The number of dwellings on a lot must not exceed the number specified in a schedule to this zone.~~

A development must meet the requirements of Clause 55. This does not apply to a development of four or more storeys, excluding a basement.

A permit is not required to construct one dependent person's unit on a lot.

### Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- ~~▪ The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.~~
- The neighbourhood character and design objectives specified in a schedule to this zone.
- For a development of three storeys or less, excluding a basement, the objectives, standards and decision guidelines of Clause 55.
- For a development of four or more storeys, excluding a basement, the Design Guidelines for Higher Density Residential Development (Department of Sustainability and Environment 2004).

### 32.06-78 Requirements of Clause 54 and Clause 55

The schedule to this zone may specify the requirements of:

- Standards A3, A5, [A6, A8, A9](#), A10, A11, A17 and A20 of Clause 54 of this scheme.
- Standards B6, B8, [B9, B13, B16](#), B17, B18, B28 and B32 of Clause 55 of this scheme.

If a requirement is not specified in the schedule to this zone, the requirement set out in the relevant standard of Clause 54 or Clause 55 applies.

### 32.06-89 Buildings and works associated with a Section 2 use

A permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 32.06-2.

### **Application requirements**

~~An application to construct a building or construct or carry out works for a use in Section 2 of Clause 32.06-2 must be accompanied by the following information, as appropriate:~~

- ~~■ A neighbourhood and site description. The neighbourhood and site description may use a site plan, photographs or other techniques and must accurately describe the site and surrounding area.~~
- ~~■ A plan drawn to scale which shows:
  - ~~■ The boundaries and dimensions of the site.~~
  - ~~■ The location, height and purpose of buildings and works on adjoining land.~~
  - ~~■ Relevant ground levels.~~
  - ~~■ The layout of existing and proposed buildings and works.~~
  - ~~■ All driveway, car parking and loading areas.~~
  - ~~■ Proposed landscape areas.~~
  - ~~■ All external storage and waste treatment areas.~~
  - ~~■ All external lighting.~~~~
- ~~■ Elevation drawings to scale showing the colour and materials of all buildings and works.~~
- ~~■ Details of any proposed signage including proposed illumination.~~
- ~~■ Construction details of all drainage works, driveways, vehicle parking and loading areas.~~
- ~~■ A landscape layout which includes the description of vegetation to be planted, the surfaces to be constructed, site works specification and method of preparing, draining, watering and maintaining the landscape area.~~

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### **Decision guidelines**

~~Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:~~

- ~~■ The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.~~
- ~~■ The neighbourhood character and design objectives specified in a schedule to this zone.~~
- ~~■ The impact of the proposed buildings and works on the amenity of existing dwellings and the surrounding area, including loss of privacy and solar access to private and public open space, and north facing windows.~~
- ~~■ The design of buildings to provide for solar access.~~

### 32.06-~~9~~10 Building height

The height of a building [used for the purposes of a dwelling or residential building](#) must not exceed a building height specified in a schedule to this zone. If no building height is specified, the height of a building must not exceed 9 metres unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, in which case the building height must not exceed 10 metres.

This does not apply to:

- An extension of an existing building that exceeds the specified building height provided that the extension does not exceed the existing building height.
- A building which exceeds the specified building height for which a valid planning or building permit was in effect prior to the introduction of this provision.
- [Architectural features, building services, infrastructure equipment and buildings and works listed at Clause 62.02-1.](#)

[A permit may be granted to construct buildings and works in excess of the height specified in this clause or in a schedule to this zone, unless the schedule specifies otherwise.](#)

[These requirements do not apply if a height is specified in an overlay, approved development plan, incorporated plan or precinct structure plan.](#)

### 32.06-~~40~~11 Exemption from notice and review

A schedule to this zone may specify that an application is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

### 32.06-~~44~~12 Advertising signs

Advertising sign requirements are at Clause 52.05. This zone is in Category 3.

**Notes:** *Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of land.*

*Check whether an overlay also applies to the land.*

*Other requirements may also apply. These can be found at Particular Provisions.*

## SCHEDULE TO THE [RESIDENTIAL 3 – LIMITED CHANGE ZONE](#)

Shown on the planning scheme map as R3Z (show number if more than one schedule)

### Name of area

#### 1.0 Neighbourhood character and design objectives

- *The objectives for the ~~precinct~~ [area](#) are specified here.*

#### 2.0 ~~Minimum subdivision area~~

- ~~*The schedule may specify the minimum lot size for a subdivision.*~~

#### 3.0 ~~Maximum number of dwellings (must not be less than two dwellings)~~

- ~~*The schedule may specify the maximum number of dwellings that can be constructed on one lot.*~~

#### [4.02.0](#) Building height

- *The schedule may specify a ~~maximum~~ height limit for the area covered by the [schedule, for sub-precincts within the schedule area or for specified development contexts](#) ~~lower other than 9 metres (3 storeys)~~.*
- *[Any height limit must comply with Ministerial Direction No.\[number\]](#)*
- *[The schedule may specify a height for which a permit may not be granted to exceed this requirement.](#)*

#### [5.03.0](#) Exemption from notice and review

- *Any exemptions are specified here.*

#### [6.04.0](#) Permit requirement for one dwelling on a lot

Is a permit required to construct or extend one dwelling on a lot of between 300 square metres and 500 square metres?

#### [7.05.0](#) Requirements of Clause 54 and Clause 55

*[The table may specify a requirement for the area covered by the schedule, for sub-precincts within the schedule area or for specified development contexts.](#)*

	Clause 54 and Clause 55 Standard	Requirement
Minimum	Standard A3 and Standard B6	<i>The schedule may specify a different setback.</i>

	<b>Clause 54 and Clause 55 Standard</b>	<b>Requirement</b>
<b>street setback</b>		
<b>Site coverage</b>	Standard A5 and Standard B8	<i>The schedule may specify a different site coverage.</i>
<b><u>Permeability</u></b>	<u>Standard A6 and Standard B9</u>	<u><i>The schedule may specify a different percentage of impervious surface.</i></u>
<b><u>Significant trees</u></b>	<u>Standard A8</u>	<u><i>The schedule may specify a different standard.</i></u>
<b><u>Landscaping</u></b>	<u>Standard B13</u>	<u><i>The schedule may specify a different standard.</i></u>
<b>Side and rear setbacks</b>	Standard A10 and Standard B17	<i>The schedule may specify different side and rear setbacks.</i>
<b>Walls on boundaries</b>	Standard A11 and Standard B18	<i>The schedule may specify a different length for a wall on a boundary.</i>
<b>Private open space</b>	Standard A17	<i>The schedule may specify a different area or dimension of private open space.</i>
	Standard B28	<i>The schedule may specify a different area or dimension of private open space.</i>
<b>Front fence height</b>	Standard A20 and Standard B32	<i>The schedule may specify a different front fence height.</i>