Planning and Environment Act 1987
Advisory Committee report pursuant to section 151 of the Act
Land Use Terms Advisory Committee
Discussion Paper
27 February 2018

Lester Townsend, Chair
Katherine Navarro, Member
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Introduction

This is the Discussion Paper of the Land Use Terms Advisory Committee. The purpose of this Discussion Paper is to inform written submissions to the Committee. The Committee will conduct targeted consultation in March 2018 with the view to finalising its advice in April 2018.

The Advisory Committee consists of:
- Lester Townsend, chair
- Katherine Navarro.

The Committee has been assisted by Cazz Redding who has provided input in to this Discussion Paper and Greta Grivas who has provided project officer support.

The Advisory Committee comes from an initiative of Smart Planning. Further general information about Smart Planning can be accessed at:


Submissions to the Advisory Committee

You are invited to consider the issues raised in this Discussion Paper and to make a submission.

You are free to structure your submission and address topics as you wish. However, it would assist the Committee if you presented your thoughts under the issues raised in this Discussion Paper. The Committee welcomes submissions on issues we have not canvassed, but that are relevant to our Terms of Reference.

Submissions can be made online at:


Please complete your submission by close of business on 3 April 2018.

For any questions please contact Greta Grivas in Planning Panels Victoria on (03) 8392 5121 or planning.panels@delwp.vic.gov.au.
Your input is sought

The Government has initiated the Smart Planning program to reform and modernise the Victorian planning system, and to increase the effectiveness and efficiency of the operation of planning schemes. In October 2017 the discussion paper, Reforming the Victoria Planning Provisions: A discussion paper was released which sought comment on a range of proposals to improve the system.

Proposal 5.2 of the Smart Planning discussion paper was to review and update the land use terms section of the Victoria Planning Provisions (VPP). The Advisory Committee was appointed following feedback from the Smart Planning consultation to address the submissions received.

This Committee has been specifically asked to provide advice and present findings and recommendations on the following matters:

- Principles and business rules for including land use terms in Clause 74.
- Existing land use terms in Clause 74 that should be removed or modified.
- New land use terms that should be included in Clause 74.
- Legal and practical implications of any recommended changes to land use terms and their definitions. These include:
  - existing use rights implications
  - consequential changes to the VPP (such as changes to zone land use tables, general terms and nesting diagrams)
  - potential impacts on users of the planning system.
- With regard to the identified legal and practical implications, a recommended approach to implement the proposed changes.

The Committee has reviewed the submissions and this Discussion Paper presents specific issues and questions in response to the initial submissions.

The Committee is aware that for any of the issues identified there will be practitioners who have firsthand experience with the issue. The Committee welcomes submissions or invitations for targeted consultation on these issues.

Making a submission

You are free to structure your submission and address topics as you wish. However, it would assist the Committee if you addressed the following questions:

1. Are the proposed principles appropriate?
2. Are there good reasons to change the practice that a land use listed in Clause 74 does not need to be defined, provided it has a well-defined common usage? What are these reasons?
3. What currently undefined terms should be defined, and what definition do you propose?
4. Is there a need to create specific definitions for land use terms defined in relation to other Acts?
5. Is there a need to list all land use terms used in VPP zone tables in Clause 74?
6. Is there a need to restrict land uses in special purpose zones to terms listed in Clause 74?

7. Should unlisted land use terms or activities be able to form part of conditions in land use tables?

8. Should ‘closet pan’ be updated to ‘toilet’ in Dwelling?

9. How can the definition of Dwelling be changed to clarify the issue of self containment?

10. How can the VPP make it clear that a Dwelling is where people live or reside either permanently or for a considerable period of time, but that Clause 52.23 applies?

11. Should Group accommodation be changed to read: Land, in one ownership, containing a number of self contained buildings dwellings used to accommodate persons away from their normal place of residence?

12. Should Rural workers’ accommodation be defined? If so, what would its definition be and how should it be treated in zones?

13. What impacts associated with ‘glamping’ need to be controlled, that are not already controlled under the Camping and caravan park term?

14. What changes are required to Retirement village and Residential village, and why?

15. Can you think of a better term than Agriculture to capture the complete range of nested uses?

16. Should ancillary goods be permitted to be sold in Primary produce sales?

17. Should the conditions for Primary produce sales in the Farming Zone, Green Wedge Zone, Green Wedge A Zone and Rural Activity Zone be amended? What should they be?

18. Should Apiculture be removed from the nesting under Animal Husbandry and be nested directly under Agriculture?

19. Is there merit in renaming the Animal husbandry terms to make them clearer?

20. Is there merit in dividing Animal husbandry into terms dealing with farmed animals, domestic pets, racing dogs, and other animals? Would the following specific changes help reduce confusion:
   a) Split the current definition of Animal keeping into Domestic pet husbandry and Racing dog husbandry.
   b) Replace the definition of Animal keeping with a broad definition that applies to animals other than farm animal, domestic pets and racing dogs.
   c) Rename Animal boarding to Domestic pet boarding and revise it to include domestic pet day care.
   d) Move Horse riding school to be nested under Animal Keeping rather than Animal training?

21. Why is there a need to define Community garden, and what would the definition be?
22. Should the VPP define Family Day Care and make it as of right where Home based business is as of right for fewer than, say, five children?
23. Should Child care centre be nested under Education centre?
24. What new Education centre terms are needed and why?
25. Is there merit in defining Brewery, Distillery or Chocolate factory? If there is, how should they be treated in zones?
26. Is there merit is changing Transfer station to read:
   Land used to collect, consolidate, temporarily store, sort or recover refuse, or used or surplus materials before transfer for disposal, recycling or use elsewhere?
27. Is there merit in changing Materials recycling to read:
   Land used to collect, dismantle, treat, process, store, recycle, or sell, refuse, used or surplus materials?
28. Should there be a Waste-to-energy facility definition?
29. If there is merit in supporting pod based motor repairs through and new definition and a particular provision? Are there other pod based businesses that may require the same approach?
30. Should Major sports and recreation facility be renamed Spectator sports facility, and Minor sports and recreation facility be renamed Community sports and recreation facility?
31. Should Restricted recreation facility be changed to read:
   Land used by members of a club or group, members’ guests, or by the public on payment of a fee, for leisure, recreation, or sport, such as a bowling or tennis club, gymnasium and fitness centre. It may include food and drink for consumption on the premises, and gaming. It may also include use by members’ guests, or by the public on payment of a fee.?
32. Should the potential overlap between Informal outdoor recreation, Open sports ground and Outdoor recreation facility be clarified? Do you support the proposed clarification?
33. Is there merit in treating shop front style recreation facilities more like shops?
34. Should the VPP list Gym, Pilates studios and Yoga studio in Clause 74, nested under Indoor recreation facility, but not defined?
35. Should Dancing school be changed to Dance studio?
36. Is the indoor–outdoor distinction for recreation facilities causing problems? If so, changes are needed to resolve these problems?
37. Why is there a need to include training in Motor racing track?
38. Is there a need to amend the definition of Medical centre, and what precise change is required?
39. Should Cinema based entertainment facility be nested under Place of assembly?
40. Should the definitions of Cinema and Cinema based entertainment facility specifically exclude a Drive-in theatre?
41. Should Conference centre be the head term instead of Function centre?
42. Should Function centre (or Conference centre if it becomes the head term) be updated to read:
Land used, by arrangement, to cater for conferences or private functions, and in which food and drink may be served. It may include entertainment and dancing?

43. Should Place of assembly, Place of worship and Restricted place of assembly be revised to include “spiritual” activities?

44. Should the Place of worship definition be changed to recognise that some religious or spiritual activities occur in non specific or non denominational buildings?

45. Should Live music venue be listed in Clause 74, and if so how would it be defined?

46. Should a definition for Solar farm, based on the current definition for Wind energy facility, be included in Clause 75?

47. Should the VPP list Bar in Clause 74 and nest it in Tavern without a definition?

48. Should the VPP list Cafe in Clause 74 and nest it in Convenience restaurant without a definition?

49. Is it appropriate to change the definition of Take away food premises to allow for a certain number of table or seats? What number?

50. What is the best way to cater for small arts venues in Clause 74:
   a) Don’t change anything
   b) Create a definition of Arts venue and nest in Place of assembly
   c) Create definition of Arts venue and nest under Tavern
   d) Something else?

51. What would be an appropriate definition for a small arts venue?

52. Is there merit in amending Shop to include:
   It includes demonstrations of products including music performances in shops selling recorded music.

53. Is there merit in amending Shop to include:
   It includes the selling of food products prepared on the premises.

54. Should the VPP list Day spa, Massage parlour, and Animal grooming in Clause 74 nested under Shop, but not defined?

55. Should ‘remote controlled equipment’ be added to Restricted retail premises?

56. Should Railway be defined as an unnested term and include Railway station?

57. What is the appropriate definition for Road?

58. Is it appropriate to delete Heliport?

59. What specific limit should be placed on pumping stations in Minor utility installation?

60. Is there merit in making it explicit in the VPP that no permit is required for water extraction? Are development controls needed?

61. Is there merit in introducing a particular provision to specify building and works requirements for a Minor utility installation similar to 52.19 Telecommunications facility.
62. Is there merit in introducing a definition of Contractors depot and allowing the temporary use of land for a Contractors depot in certain circumstance?

63. Should the VPP list Self-storage facility in Clause 74 nested under Store, but not defined?

64. Should Car park include:
   - It may include charging of electric vehicles?

65. Is there merit in defining Display village, and what should it include?

66. Is there merit in defining a use aimed at capturing pop up galleries or shops? If so what should it include, and what limits should be applied?

67. What practical implementation issues should the Committee consider?
1 Background

1.1 The role of the Committee

The Government initiated the Smart Planning program to reform the Victorian planning system and increase the effectiveness and efficiency of the planning system. As part of that program, a discussion paper – Reforming the Victoria Planning Provisions – was released in October 2017. That discussion paper sought comment on a number of proposals to improve the system. Proposal 5.2 of that discussion paper was to review and update the land use terms section of the VPP, to achieve the following objectives:

- Increase use of everyday terms that the community understands
- Remove or modernise obsolete terms and provide for new or emerging land uses
- Distinguish between similar land uses where treated differently in land use tables
- Remove unnecessarily specific terms and broaden terms, where appropriate
- Provide definitions for undefined terms where appropriate (except for terms that are sufficiently captured by an ordinary dictionary meaning or defined in the Act).

This Committee has been appointed to provide advice and present its findings and recommendations on the following matters:

- Principles and business rules for including land use terms in Clause 74.
- Existing land use terms in Clause 74 that should be removed or modified.
- New land use terms that should be included in Clause 74.
- Legal and practical implications of any recommended changes to land use terms and their definitions. These include:
  - existing use rights implications
  - consequential changes to the VPP (such as changes to zone land use tables, general terms and nesting diagrams)
  - potential impacts on users of the planning system.
- With regard to the identified legal and practical implications, a recommended approach to implement the proposed changes.

Method

The Terms of References state that the Committee is to conduct the review generally according to the following methodology:

- preparation of a concise discussion paper
- an on-line submission process
- targeted consultation to explore the issues or other matters, including up to two workshops or forums.

Scope of the Committee

Clause 4 of the Terms of Reference states that the Committee is not expected to:

- Review land use terms which are currently under consideration by the Department of Environment, Land, Water and Planning (DELWP) through other projects.
The Committee has been advised that the following terms do not need to be considered by the Committee:

- Residential building
- Residential aged care
- Rooming house
- Community care accommodation
- Extensive animal husbandry, Intensive animal husbandry, Cattle feedlot, Broiler farm
- Earth and energy resources industry, and Stone extraction.

Clause 4 of the Terms of Reference also states that the Committee is not expected to:

- Review land use permissions in zones, with the exception of identifying and having regard to the consequential impacts of proposed changes in land use terms on the functioning of zones.
- Recommend changes that would have major implications for the operation and purposes of the existing zones.
- Review Clause 72 (General Terms), unless there is a consequential change that flows from a change to a land use term.

1.2 Reforms to date

Amendment VC142 implemented some of the less complicated suggestions which came through the survey or other past reviews.

Changes to definitions include the following:

- Amending the Research and development centre definition to include ‘or test’ after ‘develop’ to clarify that the testing of new technologies is allowable and to facilitate the development of such centres in line with State policy objectives.
- Amending the Warehouse definition to clarify it can include the storage and distribution of goods for online retail, but excludes in-person collection and retail sales at the premises.

Changes to land use terms include the following:

- replacing the term Adult sex bookshop with Adult sex product shop
- replacing the term Home occupation with Home based business
- replacing the term Pleasure boat facility with Recreational boat facility
- replacing the term Pleasure park with Amusement park
- deleting the term Business college from the VPP
- deleting the term Cabaret from the VPP
- deleting the term Community market from the VPP and making consequential changes to land use tables within Clauses 32.03, 32.07, 32.08, and 32.09 to make Market a Section 2 (permit required) land use
- deleting the term Trash and treasure market from the VPP.

1 In this Discussion paper we have identified Existing land use terms, Proposed or unlisted land use terms and Obsolete land use terms.
1.3 What are the issues

The Smart Planning project has undertaken various public and targeted consultations, and received many submissions. The Committee has been provided with the submissions relating to land use terms.

Some submissions commented on matters that, on reflection, fall outside of the scope of the Terms of Reference of the Advisory Committee, because they relate to broader policy issues.

Many submitters made general submissions or supported general principles, such as a periodic review or consultation with Councils using real live examples; very few submissions set out the precise change they sought to definitions.

Overarching issues

A number of issues have implications under a number of land use terms:

- The need to cater for small scale food production which can be prohibited in certain zones because of the operation of Clause 52.10.
- The need to simplify controls over shop front activities that fall outside of the shop definition and hence need a permit such as small gyms.
- The need to better cater for arts venues and cultural activities.

In this Discussion Paper these issues are discussed in a number of places under the relevant head clause.

General issues

The issues raised in submissions, which don’t relate to specific terms, include:

- The relevance of terms is more important than the number of terms defined.
- Duplication and overlapping of definitions should be avoided.
- Terms should be defined enough to guide decision-making, and not so broad as to lose meaning and purpose.
- Victorian Civil and Administrative Tribunal (VCAT) cases should be used to guide and determine appropriate land use definitions.
- Obsolete and outdated terms should be removed or revised.
- All land use terms in Clause 74 should be defined, including currently undefined definitions.
- Common land use terms which are not defined should be (for example Road).
- Land use terms should be ‘future proofed’ to allow for emerging technologies, for example, carbon sequestration, microbreweries and ‘pop up shops’.

Issues with specific terms

Issues which relate to specific terms are addressed in the Chapter 0 of this Report.

1.4 The approach of the Committee

The questions identified in this Discussion Paper are to assist submitters. They do not represent any predetermined views of the Committee.

The Committee is aware that for any of the issues identified there will be practitioners who have firsthand experience with the issue. The Committee welcomes submissions or invitations for targeted consultation on these issues.
2 About land use terms

Appendix B provides a more detailed explanation of this Chapter.

Land use terms are defined in Clause 74 of the VPP.2

Land use terms are ‘nested’; that is, a term can be included in another term or include terms within itself. The nesting of land use terms reduces the number of land use terms that need to be listed in a table of uses.

The definitions are set out in a table with four columns:
- the defined term
- the definition, if there is one – some terms are listed without definition
- other listed terms that are included in the definition
- the land use term in which it is included, if any.

Land use terms play a critical role in the planning system in (at least) six places:
- Determining whether a permit is required in a zone
- Informing affected parties of the nature of advertised uses
- Drafting zone controls, either standard or special purpose zones3
- Clause 52.06 dealing with car parking
- Clause 52.10 dealing with uses with adverse amenity potential
- Specifying exempt land uses in Clause 62.01.

Land use definitions do not have a role in determining existing use rights.

Legal cases have drawn a distinction between:
- the ‘purpose of use’ and
- ‘use’ in the sense of activities, processes or transactions.

It is accepted than the activities on a site may have more than one purpose, and it is the purpose that determines how the definitions should be applied.4

VCAT has also noted:5

... it is necessary to have regard to the structure, context and purpose of the planning scheme provisions at the time of interpreting the land use terms.

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2 The VPP is a comprehensive set of planning provisions for Victoria that are used, as required, to construct planning schemes. Clause 74 appears in all planning schemes without variation from the VPP.
3 These Clause 37 zones can have a specifically tailored table of uses.
4 Cascone v City of Whittlesea (1993) 11 AATR 175, 190.
5 Radford v Hume CC [2006] VCAT 2662 at [2].
3 Principles and business rules

3.1 Introduction

The Committee’s Terms of Reference require it to advise on:
- Principles and business rules for including land use terms in Clause 74.

The Committee seeks feedback on the following principles and business rules that could underpin drafting land use terms:
- **Principles:**
  - Focus on what needs control
  - Use everyday terms
  - Don’t define everything
  - Avoid planning controls in definitions
  - Use facilitatory terms and guard against restrictive interpretations
  - Don’t replicate other Acts: define for Planning Schemes
  - Avoid general definitions in land use terms
  - Be clear about distinguishing features
  - Cater for emerging uses.

- **Business rules:**
  - List in Clause 74 any term that applies in a VPP zone
  - Only use listed terms in the ‘use’ column of zones
  - Allow unlisted land use terms in conditions in zones.

In setting out these principles and business rules we have been mindful of the Smart Planning objectives outlined in Chapter 0.

3.2 Proposed principles

This section sets out a number of proposed principles. The Committee seeks submissions on the following question:

1. Are the proposed principles appropriate?

(i) Focus on what needs control

Land use definitions should draw distinctions based on the anticipated impacts of the use. Land use terms are not a typology of human activities, but a tool for managing impacts to achieve planning objectives. It doesn’t matter if a land use term covers a miscellany of uses provided those uses have a common set of impacts.

It is particularly important to be clear on the difference between similar land uses where they are treated are differently in land use tables. If uses are treated in the same way in land use table, there is less of need to distinguish between them.

(ii) Use everyday terms

It is not always possible to use everyday terms for land uses, but the aim should be to use an everyday term where possible. This often involves listing everyday terms without definition so it is clear where they fall.
Most planners will know what a Bar is, which falls within a Tavern. Listing Bar in the table of uses as being part of a Tavern – but without a definition – would remove any doubts about the term Bar in a permit header or in a notice. However, there would potentially be a lack of clarity as to what aspects of a Tavern were not part of a Bar.

(iii) Don’t define everything

Some terms are listed in Clause 74, but are not defined. A number of stakeholders called for definitions of these terms.

List 1: Undefined land use terms listed in Clause 74

<table>
<thead>
<tr>
<th>Airport</th>
<th>Drive-in theatre</th>
<th>Kindergarten</th>
<th>Racing dog training</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amusement park</td>
<td>Employment training centre</td>
<td>Library</td>
<td>Real estate agency</td>
</tr>
<tr>
<td>Backpackers' lodge</td>
<td>Equestrian supplies</td>
<td>Market garden</td>
<td>Reception centre</td>
</tr>
<tr>
<td>Bank</td>
<td>Freezing and cool storage</td>
<td>Mooring pole</td>
<td>Reservoir</td>
</tr>
<tr>
<td>Beauty salon</td>
<td>Golf course</td>
<td>Nurses' home</td>
<td>Residential college</td>
</tr>
<tr>
<td>Boarding house</td>
<td>Golf driving range</td>
<td>Nursing home</td>
<td>Rice growing</td>
</tr>
<tr>
<td>Boat ramp</td>
<td>Hairdresser</td>
<td>Paintball games facility</td>
<td>Road freight terminal</td>
</tr>
<tr>
<td>Bus terminal</td>
<td>Hall</td>
<td>Party supplies</td>
<td>Secondary school</td>
</tr>
<tr>
<td>Car sales</td>
<td>Heliport</td>
<td>Pier</td>
<td>Slipway</td>
</tr>
<tr>
<td>Car wash</td>
<td>Horse riding school</td>
<td>Pontoon</td>
<td>Supermarket</td>
</tr>
<tr>
<td>Conference centre</td>
<td>Horse stables</td>
<td>Postal agency</td>
<td>Tertiary institution</td>
</tr>
<tr>
<td>Dancing school</td>
<td>Hostel</td>
<td>Primary school</td>
<td>Travel agency</td>
</tr>
<tr>
<td>Department store</td>
<td>Jetty</td>
<td>Race course</td>
<td>Zoo</td>
</tr>
<tr>
<td>Dog breeding</td>
<td></td>
<td>Racing dog keeping</td>
<td></td>
</tr>
</tbody>
</table>

Clause 74 lists fifty-four terms without definition: this aids interpretation as it shows, for example that a Hairdresser is nested within a Shop without the need to define Hairdresser. Some stakeholders found this lack of definition frustrating, but the Committee sees no need to define commonly accepted terms. Having said this, there may be merit in defining broader terms in the list including Conference centre, Hall, Hostel to assist planners with categorising these uses.

The Committee seeks submissions on the following questions:

2. Are there good reasons to change the practice that a land use listed in Clause 74 does not need to be defined, provided it has a well-defined common usage? What are these reasons?

3. What currently undefined terms should be defined, and what definition do you propose?

(iv) Avoid planning controls in definitions

Some submitters sought restrictions as part of a definition, for example, one stakeholder suggested:

Include a more specific definition for Caretaker’s dwelling which ensures that they are attached to business as there has been decisions by the Victorian Civil and Administrative Tribunal that has approved a five bedroom dwellings which is significant in size with a large family in residence. In this case, parameters
on the size, buffer considerations relating to amenity impacts for occupants, number of occupants etc. would have been useful.

Using Victoria’s Planning System is a detailed guide for people who use the planning system on a regular basis. Chapter 9 of the guide deals with plain English. It provides clear advice to avoid placing control in definitions.

It is true that some definitions embody restrictions on the scale of the use, for example:

**Convenience shop:** 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.

This makes sense when the restriction relates to the likely impacts of the use, and not the planning merits of the permission.

Such restrictions could be included as a condition in the table of uses with a reference to a particular provision if required.

**(v) Use facilitatory terms and guard against restrictive interpretations**

A number of definitions specifically guard against overly restrictive interpretations, for example, a **Restaurant** allows for “entertainment and dancing”. The Committee sees merit in this approach.

**(vi) Don’t replicate other Acts: define for Planning Schemes**

A number of definitions make reference to activities defined under other Acts, for example, **Mineral exploration** and **Mineral extraction**. Stakeholders have suggested the need to define **Railway** and **Road**:

> Where practicable, definitions within the VPPs should seek to be consistent with defined terms in other legislation. For example, the definition of “road” in the Road Management Act 2004 includes both the roadway and all of the land within the ‘road reserve’ – this could be clarified to ensure consistency of understanding and use.

While definitions should seek to be consistent, the Committee supports definition tailored for the planning system.

The Committee notes that this principle has not been applied for **Geothermal energy exploration**, **Geothermal energy extraction**, **Greenhouse gas sequestration**, **Greenhouse gas sequestration exploration**, **Mineral exploration**, **Mineral extraction**, **Petroleum Exploration**, **Petroleum extraction** and some uses listed under **Utility Installation**.

All of these terms are defined by reference to their primary legislation, rather than being adapted to incorporate a land use or planning perspective as one would ordinarily expect. There may be a reason the Committee is not aware of for this approach and the Committee invites submissions in relation to land use planning based definitions for these terms.

The Committee seeks submissions on the following question:

4. **Is there a need to create specific definitions for land use terms defined in relation to other Acts?**
(vii) **Avoid general definitions in land use terms**

Some stakeholders called for definitions, for example, Affordable housing, which are not so much a land use term but a general term. The cost of a house does not change the use. The Committee is only concerned with land use terms. Clause 72 would be a more appropriate place to put this definition.

(viii) **Be clear about distinguishing features**

Part of understanding how definitions work is understanding what the distinguishing features of a use are compared to similar of nested uses. In some case the land use term does not reflect these differences, for example the difference between Major sports and recreation facility and Minor sports and recreation facility is whether substantial provision made for spectators; this should be clear in the name of the term.

(ix) **Cater for emerging uses**

There is an emerging trend for small scale integrated food and entertainment establishments, for example small scale specialist food and beverage producers. These uses may for all intents and purposes appear as a shop, but fall within an industry definition.

### 3.3 Proposed business rules

(i) **List in Clause 74 any term that applies in a VPP zone**

The Committee has not had the opportunity to cross check all the terms listed in zone tables (including schedules to special purpose zones) are listed in Clause 74. The Committee notes, for example, that Contractor’s depot appears in the Public Park and Recreation Zone, but is not listed in Clause 74. Railway and Road are used in zones but not defined.

The Committee seeks submissions on the following question:

5. **Is there a need to list all land use terms used in VPP zone tables in Clause 74?**

(ii) **Only use listed terms in the ‘use’ column of zones**

Planning Practice Note 10, Writing Schedules (January 2018), says of land use tables:

> Tables of uses should use the land use terms and follow the nesting diagrams in Clauses 74 and 75. If the head of a nested group of land use terms is intended to be a Section 2 use and there are no exemptions anywhere else in the table, then it does not need to be listed. (Page 4)

> If a nested land use term is used in a Section, the head of the nest and an exemption must also be listed in the table. (Page 9)

A difficulty is that as land use terms change special purpose zone schedules are not routinely updated and now contain many outdated land use terms.

The Committee seeks submissions on the following question:

6. **Is there a need to restrict land uses in special purpose zones to terms listed in Clause 74?**
(iii) Allow unlisted land use terms in conditions in zones

It is one thing to restrict the ‘use’ column in land use tables to listed terms, it is a different issue to apply the same restriction to the ‘condition’ column.

Drafting practice seems to vary on applying this restriction to the ‘condition’ column. For the Collingwood Arts Precinct a Special Use Zone was exhibited as part of the Fast Track Government Land Service process. The exhibited zone included:

<table>
<thead>
<tr>
<th>Section 1 – Permit not required</th>
<th>Use</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Office</td>
<td>Must be used in conjunction with the use of the site for arts and creative industries.</td>
</tr>
</tbody>
</table>

Following the public consultation process, but before approval this was changed to:

<table>
<thead>
<tr>
<th>Section 1 – Permit not required</th>
<th>Use</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Office</td>
<td>Must be used in conjunction with the use of an arts and craft centre, a place of assembly (other than amusement parlour or nightclub), and leisure and recreation (other than Major sports and recreation facility and Motor racing track).</td>
</tr>
</tbody>
</table>

The Committee understands that this was because it was felt within the Department that a condition in a table of uses could not refer to a land use activity. This will have implications for other proposed Special Use Zones such as the following extract of a proposed zone:

<table>
<thead>
<tr>
<th>Section 2 – Permit required</th>
<th>Use</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Accommodation (other than Dwelling)</td>
<td>Must be for tourists.</td>
</tr>
<tr>
<td></td>
<td>Dwelling</td>
<td>Must be for guest or staff accommodation</td>
</tr>
<tr>
<td></td>
<td>Industry</td>
<td>Must be a brewery</td>
</tr>
<tr>
<td></td>
<td>Market</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Manufacturing Sales</td>
<td>Must be a brewery</td>
</tr>
<tr>
<td></td>
<td>Mineral, stone or soil extraction (other than Mineral exploration, Mining, and Search for stone)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Winery</td>
<td></td>
</tr>
</tbody>
</table>

The Committee can see no reason why it would not be appropriate to include unlisted and potentially undefined uses or activities as condition in the table of uses in a special purpose zone. A permit can be issued for a ‘brewery’ for example and so there does not seem to be any good reason why a condition could not control this.

The Committee seeks submissions on the following question:

7. Should unlisted land use terms or activities be able to form part of conditions in land use tables?
4 Possible changes to land use terms

The Committee’s Terms of Reference require it to advise on:
- Existing land use terms in Clause 74 that should be removed or modified.
- New land use terms that should be included in Clause 74.

4.1 Accommodation

Issues raised in relation to Accommodation uses included:
- Update closet pan to toilet
- Student housing where a living or kitchen space is shared
- Short term accommodation
- Bed and breakfast
- Group accommodation
- Health and wellness retreat
- Rural workers’ accommodation in rural zones
- Caravan and camping park
- Dependent person’s unit and tiny houses
- Retirement Village and Residential Village.

(i) Update closet pan to toilet

The definition of dwelling states it must include:

\[ d) \text{ a closet pan and wash basin} \]

It was submitted that this should be updated to:

\[ d) \text{ toilet and wash basin} \]

This seems to make sense.

The Committee seeks submissions on the following question:

8. Should ‘closet pan’ be updated to ‘toilet’ in Dwelling?

(ii) Student housing where a living or kitchen space is shared

Submissions requested a definition for shared student housing where a living or kitchen space is shared. The critical aspect to this issue is whether the accommodation is ‘self contained’.

Table 1: Comparison of selected Accommodation use terms

<table>
<thead>
<tr>
<th>Accommodation</th>
<th>Dwelling</th>
<th>Residential building</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land used to accommodate persons.</td>
<td>A building used as a self contained residence which must include:</td>
<td>Land used to accommodate persons, but does not include camping and caravan park,</td>
</tr>
<tr>
<td></td>
<td>a) a kitchen sink;</td>
<td>corrective institution, dependent person’s unit, dwelling, group accommodation, host farm,</td>
</tr>
<tr>
<td></td>
<td>b) food preparation facilities;</td>
<td>residential village or retirement village.</td>
</tr>
<tr>
<td></td>
<td>c) a bath or shower; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d) a closet pan and wash basin.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>It includes out-buildings and works normal to a dwelling.</td>
<td></td>
</tr>
</tbody>
</table>
On one reading a shared kitchen might mean that accommodation is not self contained and hence the establishment is a **Residential building**. But if the accommodation determined to be self contained, because the building as a whole provided self contained accommodation, then (provided it is for permanent accommodation) it is a **Dwelling**.

The issue is whether a student building as a whole is self contained. VCAT has considered the issue of self containment in this in relation to Clause 52.23, Shared housing.

VCAT said:

6. **... Whilst Cobden’s case was dealing with a community care unit, Clause 52.24 also contains a requirement to provide self contained accommodation for clients. On this point, Acting Deputy President Byard said: “I am persuaded that self contained accommodation in Clause 52.24 in relation to community care unit means that the unit, not individual rooms, is to be self contained”**.

7. In **Knox CC v Tulcany Pty Ltd** Senior Member Liston was dealing with a boarding house or rooming house and Clause 52.23 specifically. He said:

- **[25]** The Tribunal recognises the difficulty of interpreting Clause 52.23. “Provides self contained accommodation” is capable of meaning “for each person” or “for the building as a whole”. A difficulty of the former interpretation is, as said by Senior Member Byard in Cobden, that this proposition “would involve there being a series of self contained flats or dwellings, rather than an accommodation “unit”.” A difficulty of the latter is that it is hard to imagine a domestic building of ten habitable rooms or less which fails the test of shared housing.

- **[26]** Ultimately we are satisfied that the correct approach is that the building, as a whole, must be self contained. Clause 52.23 is not unambiguous, but there is nothing in the clause which necessarily requires its interpretation based on an analysis of the tenancy arrangements of the occupants. The Tribunal in Cobden v Greater Bendigo CC [2003] VCAT 1395, dealt with the issue of self contained accommodation in the context of a community care unit, nevertheless the decision of the Tribunal in the Cobden case supports our conclusion in this matter.

I support the conclusions in Cobden v Greater Bendigo CC and Knox CC v Tulcany Pty Ltd in preference to Intervarsity Developments Pty Ltd v Frankston CC. I find that so far as the requirement in Clause 52.23 regarding self contained accommodation is concerned, it is the building as a whole that must provide self contained accommodation. Accordingly, there is no question that Holly Lodge is a building that provides self contained accommodation.

The same analysis would appear relevant to the definition of **Dwelling**. The Committee seeks submissions on the following question:

9. **How can the definition of Dwelling be changed to clarify the issue of self containment?**

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(iii) **Short term accommodation**

Some stakeholders sought a definition to distinguish between long term and short term or temporary forms of accommodation.

This issue has been addressed by VCAT. The definition of dwelling provides that it is a building used as a self contained **residence**. Residence means a place where people live or reside either permanently or for a considerable period of time.\(^8\)

VCAT has noted:\(^9\)

> It is also important when considering whether the land is used as a dwelling not to be distracted by the form of buildings on the land. Just because there is a house on the land does not necessarily mean that it is being used as a dwelling. The house on the subject land may well be used as a residence in other circumstances, but it is not being so used at present. The use of land for planning purposes is not determined by the style of development but the purpose for which the land is actually used. Thus it is fallacious to say that because there is a house on the land ipso facto the land is being used as a dwelling.

If no one resides at a house and people only stay there temporarily over the weekend or for very short periods of time, then house is not a building used as a residence and therefore the land cannot be said to be used for the purpose of a dwelling. However, Clause 52.23 means that a permit is not required.

Clause 52.23, **Shared Housing**, states:

> A permit is not required to use a building, including outbuildings normal to a dwelling, to house a person, people and any dependants or 2 or more people if the building meets all of the following requirements:
> • Is in an area or zone which is used mainly for housing.
> • Provides self contained accommodation.
> • Does not have more than 10 habitable rooms.

On a plain English reading of the term “**shared housing**”, the concept of tourist or other short term rental accommodation does not immediately spring to mind. The concept of shared housing is typically associated with student housing or housing shared by group of people not necessarily related.

VCAT said:\(^10\)

> I find that it is possible to interpret Clause 52.23 as being applicable to any situation where accommodation is provided in a building for any person or people if the building meets each of the three specified requirements. It is ... “a very general provision indeed”. However, ... an examination of the history of the introduction of the planning scheme provisions now in clauses 52.22,
52.23 and 52.24 makes it evident that this was the intention, that is, that it be a very general provision.

If people choose to let out a holiday house or other single accommodation unit, a planning permit for the use of land for this purpose is not generally sought or required by councils, probably on the erroneous basis that such accommodation is a Dwelling. As VCAT has determined, it is probably not the correct characterisation because the land is not being used as a residence. But the question arises as to whether any good planning purpose would be served by requiring a planning permit for a domestic scale accommodation use, which in other circumstances might well be used as a dwelling.

The issue of controlling short term accommodation on a domestic scale is not a change in the definition of Dwelling, but in a change to 52.23. This is beyond the scope of this Committee.

The Department has recently consulted on changes to Clause 52.23 which would seem to have the effect of making short term accommodation no longer subject to the Clause 52.23 exemption.

The ‘Review and reform of planning provisions for community care unit, crisis accommodation and shared housing’ May 2017:

VCAT have previously determined ... that any land use included in the term accommodation ... can ‘benefit’ from the exemption provided by the existing shared housing provisions. The draft provisions now address this issue and clarifies that the exemption only applies to a rooming house.

The Committee seeks submissions on the following question:

10. How can the VPP make it clear that a Dwelling is where people live or reside either permanently or for a considerable period of time, but that Clause 52.23 applies?

(iv) Bed and breakfast

Some submitters thought the term Bed and breakfast was no longer used publicly in the way the VPP intended, and was outdated.  

<table>
<thead>
<tr>
<th>Table 2: Bed and breakfast definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Land use term</strong></td>
</tr>
<tr>
<td>Bed and breakfast</td>
</tr>
</tbody>
</table>

A dwelling includes “... out-buildings and works normal to a dwelling” and so a Bed and breakfast can be delivered in an outbuilding. If the outbuilding is capable of being classified as a separate Dwelling but is not used as a residence then the shared housing provisions of 52.23 apply.

As the Committee understands it Bed and breakfast allows people to use part of their dwelling for paid accommodation without an issue that the use is ancillary to the use of the

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11 The Committee understands the ‘bnb’ in the popular online travel service ‘Airbnb’ is a contraction of bed and breakfast.
land as a **Dwelling**. It is separately listed so that limits can be placed on the number of people and car parking, for example in the General Residential Zone:

**Section 1 – Permit not required**

<table>
<thead>
<tr>
<th>Use</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bed and breakfast</td>
<td>No more than 10 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.</td>
</tr>
</tbody>
</table>

(v) **Group accommodation**

The issue with this definition is that **Dwelling** refers to people residing but this term refers to people away from their normal place of residence. This in an inherent contradiction.

**Table 3: Group accommodation definition**

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group accommodation</td>
<td>Land, in one ownership, containing a number of dwellings used to accommodate persons away from their normal place of residence.</td>
</tr>
</tbody>
</table>

The Committee seeks submissions on the following question:

11. Should **Group accommodation** be changed to read:

    *Land, in one ownership, containing a number of self contained buildings **dwellings**, used to accommodate persons away from their normal place of residence?*

(vi) **Health and wellness retreat**

Some submitters sought a specific definition for a health and wellness retreat. It is not immediately clear to the Committee how such a use might have a different planning impact to an establishment where the patrons were less interested in their own health.

If the issue is to support tourist accommodation in areas where this is currently prohibited this raises a broader policy issue, beyond the scope of this Committee.

(vii) **Rural workers’ accommodation in rural zones**

The issue of rural workers’ accommodation in rural zones would seem to be a matter for the zone controls and not land use terms. It is not clear from submissions if the accommodation is intended for seasonal workers or for permanent workers. There may be benefit in defining **Rural workers’ accommodation**. It could fit under Hostel (seasonal) or Boarding house (permanent).

Accommodation for seasonal workers may well be ancillary to the agricultural use the farm use if the workers work on land in the same ownership.

The Committee seeks submissions on the following question:

12. Should **Rural workers’ accommodation** be defined? If so, what would its definition be and how should it be treated in zones?
(viii) Caravan and camping park

It was submitted that Caravan and camping park needs to be expanded to deal with glamping and long term accommodation on park sites.

Table 4: Camping and caravan park definition

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Camping and caravan</td>
<td>Land used to allow accommodation in caravans, cabins, tents, or the like.</td>
<td>Accommodation</td>
<td></td>
</tr>
</tbody>
</table>

Glamping

In respect of glamping – glamorous camping – the quality of the tents would seem to be irrelevant to the purpose of the use.

The Committee seeks submissions on the following question:

13. What impacts associated with ‘glamping’ need to be controlled, that are not already controlled under the Camping and caravan park term?

Permanent accommodation

VCAT\(^\text{12}\) considered an application for 67 self contained cabins in the Green Wedge Zone. The Tribunal had to determine whether the 67 cabins each with two ancillary car spaces, additional visitor parking and communal multipurpose facilities comprise:

- a Camping and caravan park, which was one of few permissible Accommodation uses in this zone, or
- multiple Dwellings or a Residential village both of which are prohibited Accommodation uses, or
- some other form of accommodation use.

It is significant that unlike other uses nested under Accommodation (for example Motel and Residential hotel) which refer to accommodation being provided for persons away from their normal place of residence, a Camping and caravan park is not subject to a requirement that it is a use which can only accommodate persons on a temporary basis.

VCAT found that while a Camping and caravan park may include some permanent residents the proposal was not a Camping and caravan park:

41 The Tribunal was advised that the project is intended as permanent housing although a proportion (undefined) would be available for non-permanent use. There is no mix proposed of caravans, cabins, tents and the like. There are no common ablution or cooking facilities. This is not a tourist location and there is no tourist attraction. There is no feature that makes this appear like a camping and caravan park. Thus, it is not accurately characterised as a camping and caravan park.

42 It is not solely tenure or shared facilities or common amenities that distinguish camping and caravan park from other forms of “dwelling” but instead a range of factors which are difficult to pin down. The Tribunal finds that tourist or holiday accommodation is one of those factors, as is some

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\(^{12}\) Wilbow Corporation v Kingston CC (Red Dot) [2005] VCAT 2699 (20 December 2005).
measure of impermanence, albeit not a completely transient population as recognised in the Dromana\textsuperscript{13} case.

(ix) Dependent person’s unit and tiny houses

It was submitted that there was a need for a definition of Tiny house or Removable dwelling as distinct from caravan.

Concern was also expressed about Dependent Person’s Units which it was said were a problem, because there is no clarity regarding what ‘care’ means. These issues relate to general issues around small secondary dwellings that go beyond land use terms and the scope of the Committee.

Table 5: Dependent person’s unit definition

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent person’s unit</td>
<td>A movable building on the same lot as an existing dwelling and used to provide accommodation for a person dependent on a resident of the existing dwelling.</td>
<td></td>
<td>Accommodation</td>
</tr>
</tbody>
</table>

(x) Retirement village and Residential village

It was submitted that Retirement village and Residential village should be combined as they are very similar. It was submitted that Retirement village allows for multiunit developments in zones that would normally not allow such density.

Table 6: Residential village and Retirement village definitions

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential village</td>
<td>Land, in one ownership, containing a number of dwellings, used to provide permanent accommodation and which includes communal, recreation, or medical facilities for residents of the village.</td>
<td></td>
<td>Accommodation</td>
</tr>
<tr>
<td>Retirement village</td>
<td>Land used to provide permanent accommodation for retired people or the aged and may include communal recreational or medical facilities for residents of the village.</td>
<td></td>
<td>Accommodation</td>
</tr>
</tbody>
</table>

The Committee seeks submissions on the following question:

14. What changes are required to Retirement village and Residential village, and why?

4.2 Agriculture

Issues raised in relation to Agriculture uses included:

- What is agriculture?
- Primary produce sales
- Animal husbandry – Animal keeping, animal boarding and animal training
- Horticulture and Crop raising.

\textsuperscript{13} Dromana Tourist Park Holdings Pty Ltd v Mornington Peninsula SC [2005] VCAT 1439 (20 July 2005).
In addition to these submissions, a number of submitters indicated that terms within Agriculture need to reflect current practices and future proof them to allow for adaptation of agricultural practices. An example of this was the interaction of free range farming and animal husbandry definitional issues. These are being considered by a separate process and fall outside the remit of this review.

(i) What is agriculture?

The first observation to make about Agriculture is that it includes a number of uses that most people would not think of as Agriculture, such as boarding domestic pets. These uses are found in industrial areas in cities as well as in rural areas.

The Committee seeks submissions on the following question:

15. Can you think of a better term than Agriculture to capture the complete range of nested uses?

(ii) Primary produce sales

It was submitted that Primary produce sales should allow for some ancillary goods. For example, a cheese shop in a rural zone may also sell crackers and bottled drinks to be consumed with the primary produce (cheese). This would seem to shift the use to a regular Shop which is prohibited in the Farming Zone.

Other issues seem to relate more to the condition applied in zones than the definition. In the Farming Zone, Green Wedge Zone, Green Wedge A and Rural Activity Zone, the conditions are:

- Must not be within 100 metres of a dwelling in separate ownership.
- The area used for the display and sale of primary produce must not exceed 50 square metres.

There are no conditions to be met in the Rural Living Zone or the Rural Conservation Zone.

The Committee notes that the produce does not have to be from the land where the Primary produce sales use is located.

Table 7: Primary produce sales definition

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary produce sales</td>
<td>Land used to display and sell primary produce, grown on the land or adjacent land. It may include processed goods made substantially from the primary produce.</td>
<td>Retail premises</td>
<td></td>
</tr>
</tbody>
</table>

The Committee seeks submissions on the following question:

16. Should ancillary goods be permitted to be sold in Primary produce sales?

17. Should the conditions for Primary produce sales in the Farming Zone, Green Wedge Zone, Green Wedge A Zone and Rural Activity Zone be amended? What should they be?
(iii) Animal husbandry – Animal keeping, animal boarding and animal training

The Committee has found the Animal husbandry set of definitions to be one of the most problematic. Leaving aside farm animals are included under Extensive animal husbandry and Intensive animal husbandry and subject to a separate review process there are a number of obvious difficulties with these definitions:

- **Animal keeping** does not cover all animals, only domestic pets and racing dogs.
- **Animal keeping** does not involve the keeping of domestic pets. Animal husbandry refers to “keep, breed, board, or train”, but Animal keeping does not include “keep” in respect of domestic pets, though it does for racing dogs.
- **Animal boarding** does not cover all animals, only domestic pets.
- A Horse riding school is under animal training, but it is not likely that the horses are being trained, rather it is the humans riding them that are being trained.

Apiculture

There were no submissions made in relation to this defined land use term, however, the Committee queried whether this land use term was better placed directly under Agriculture rather than being nested under Animal Husbandry.

The Committee seeks submissions on the following questions:

18. Should Apiculture be removed from the nesting under Animal Husbandry and be nested directly under Agriculture?

What the terms actually cover

The definitions embody four different animal related activities:

- ‘keep’ which the Committee takes to mean keeping your own animals
- ‘breed’
- ‘board’ look after other animals on a temporary basis for a fee
- ‘train’.

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Animal husbandry</td>
<td>Land used to keep, breed, board, or train animals, including birds.</td>
<td>Animal keeping</td>
<td>Agriculture</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Animal training</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Horse stables</td>
<td></td>
</tr>
<tr>
<td>Animal keeping</td>
<td>Land used to: a) breed or board domestic pets; or b) keep, breed, or board</td>
<td>Animal boarding</td>
<td>Animal husbandry</td>
</tr>
<tr>
<td></td>
<td>racing dogs.</td>
<td>Dog boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Racing breeding</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Racing dog keeping</td>
<td></td>
</tr>
<tr>
<td>Animal boarding</td>
<td>Land used to board domestic pets, such as boarding kennels and a cattery.</td>
<td></td>
<td>Animal keeping</td>
</tr>
<tr>
<td>Dog breeding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Racing dog keeping</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Animal training</td>
<td>Land used to train animals.</td>
<td>Horse riding school</td>
<td>Animal husbandry</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Racing dog training</td>
<td></td>
</tr>
</tbody>
</table>
The definitions distinguish:
- farm animals in **Extensive animal husbandry** and **Intensive animal husbandry**
- racing dogs
- dogs in general
- domestic pets
- horses
- other animals.

**Figure 1:** Understanding the non-farm animals covered by Animal husbandry terms

A number of submissions said there should be a clear distinction between domestic pets and non-domestic pets or other animals.

Some submitters contended that there is an unnecessary overlap with the land use terms **Animal keeping**, **Animal boarding** and **Animal training**, with the land use terms review needing to reframe these terms and make it clear whether they apply to domestic pets acknowledging there is a need for a specific reference to racing dogs.

In a recent VCAT case of *Living Streets Designs Pty Ltd v Strathbogie SC (Red Dot) [2016]* VCAT, the VCAT considered a number of issues, namely whether the defined use of training (which is as of right) would be caught up in the other defined use of **Animal keeping** and therefore the whole enterprise required a planning permit. As the facility involved a separate and distinct use (**Animal keeping**), this second use required a planning permit. The Tribunal noted a high level review of these definitions was required, including determining whether both definitions needed to be retained, noting that no actual definitions of these two defined uses are provided in Clause 74.

In that case, the impact of the differences between the two definitions resulted in **Racing dog training** (a Section 1 use in the Farming Zone) did not require a planning permit, but **Racing dog keeping** which is nested under **Animal keeping** was only a Section 1 use in the Farming Zone if there were fewer than 5 animals under **Animal keeping**.
It is worth noting that keeping a domestic pet would seem to fall under Agriculture and would be a Section 2 use permit required in a General Residential Zone if it were not ancillary to the Accommodation use. This is likely to be managed by way of local laws.

In the General Residential Zone a person without a permit can:
- breed domestic pets, provided there are no more than two animals
- keep, breed, or board racing dogs provided there are no more than two racing dogs.

It is not clear to the Committee how a successful breeding operation can take place with no more than two animals.

In the General Residential Zone a person can seek a permit to:
- breed domestic pets, provided there are no more than five animals
- keep, breed, or board racing dogs provided there are no more than five racing dogs.

**Doggy day care**

Some submitters sought a specific clarification around Doggy day care. The Committee thinks that this is simply a form of animal boarding and the definition could make this clear.

**Equine related definitions**

A number of submissions suggested that equine related uses should be removed from Agriculture to better manage the impact on productivity and amenity. Part of this concern was that farms in the Green Wedge Zone were being ‘overtaken’ by hobby farms and horse agistment where previously they were used for agricultural purposes such as cattle grazing, and cropping. These concerns extended to the loss of valuable farming land to pursuits that are not traditionally “agricultural” and do not contribute to food production.

This is not primarily a definitional issue but a policy issue. As discussed below the Committee is seeking feedback on possible changes to the Animal husbandry group of definitions. If there were clear policy reasons to control equine uses they could be nested under Animal husbandry.

**A way forward**

The Committee seeks feedback on a number of possible changes:
- Divide Animal husbandry into terms dealing with farm animals (Extensive animal husbandry and Intensive animal husbandry), domestic pets, racing dogs, and other animals.
- Split the current definition of Animal keeping into Domestic pet husbandry and Racing dog husbandry.
- Replace the definition of Animal keeping with a broad definition that applies to animals other than farm animal, domestic pets and racing dogs.
- Rename Animal boarding to Domestic pet boarding and revise it to include domestic pet day care.
- Move Horse riding school to be nested under Animal Keeping rather than Animal training.
The Committee seeks submissions on the following questions:

19. Is there merit in renaming the Animal husbandry terms to make them clearer?

20. Is there merit in dividing Animal husbandry into terms dealing with farmed animals, domestic pets, racing dogs, and other animals? Would the following specific changes help reduce confusion:
   a) Split the current definition of Animal keeping into Domestic pet husbandry and Racing dog husbandry.
   b) Replace the definition of Animal keeping with a broad definition that applies to animals other than farm animal, domestic pets and racing dogs.
   c) Rename Animal boarding to Domestic pet boarding and revise it to include domestic pet day care.
   d) Move Horse riding school to be nested under Animal Keeping rather than Animal training?

The Committee is not proposing any changes to whether or not a permit is required in respect to the various uses in different zones.
(iv) Horticulture and Crop raising

A number of submitters contended the differences between Crop raising and Horticulture were not clear, but it is not clear to the Committee how these difficulties play out in practice. Horticulture is nested under Crop raising.

<table>
<thead>
<tr>
<th>Crop raising</th>
<th>Horticulture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land used to propagate, cultivate or harvest plants, including:</td>
<td>Land used to propagate, cultivate, or harvest:</td>
</tr>
<tr>
<td>- cereals</td>
<td>- flowers</td>
</tr>
<tr>
<td>- flowers</td>
<td>- fruit</td>
</tr>
<tr>
<td>- fruit</td>
<td>-</td>
</tr>
<tr>
<td>- seeds</td>
<td>-</td>
</tr>
<tr>
<td>- trees</td>
<td>-</td>
</tr>
<tr>
<td>- turf</td>
<td>-</td>
</tr>
<tr>
<td>- vegetables</td>
<td>- vegetables</td>
</tr>
<tr>
<td>- -</td>
<td>- vines</td>
</tr>
<tr>
<td>- -</td>
<td>- or the like</td>
</tr>
</tbody>
</table>

There was a submission in relation to “intensive horticulture” which may be undertaken within the structures or buildings such as greenhouses, specifically as structures for the cultivation or protection of plants.

One option is would be to create new definitions under Horticulture to differentiate between Protected horticulture and Open air horticulture. It seems that the issue relates primarily to the horticultural structure and rather than the use as such. If there is a policy reason to control these structures then it might be better to address it a building and works issue rather than a land use issue. This would potentially allow control (if it were justified) under overlay controls and well as zone controls.

(v) Community gardens

A number of submissions sought a definition of “market garden/streetscape garden/edible garden”. Plan Melbourne says:

Policy 5.4.2 Support community gardens and productive streetscapes

Melbourne has more than 50 community gardens, with more planned. Establishing more community gardens will give Melburnians opportunities to share skills and learn from their neighbours’ food-growing knowledge, increase social interaction and community partnerships, produce local food for personal consumption or sale at local farmers’ markets, and promote healthy eating.

14 As an aside, it is not clear to the Committee that a mushroom is a plant, except in the broadest of taxonomies and so would not be covered by these definitions.
A community garden would seem to fall squarely within Horticulture. There may be merit in defining a Community garden if there is a policy position to reduce controls on this sort of community activity.

The Committee seeks submissions on the following question:

21. Why is there a need to define Community garden, and what would the definition be?

4.3 Child care centre group

Currently Child care centre only includes Kindergarten in its nesting.

Children can be noisy, and the key issue relating to this use is noise. This along with carparking and the issue of busy pick ups and drop offs causing traffic congestion can affect the amenity of a neighbourhood. The impact of such uses has been examined in VCAT cases such as Petzieredes v Hobsons Bay CC (Red Dot)[2012] VCAT 686 that considered the impacts of child care centres in a residential zone setting, particularly with issues relating to children’s noise and whether acoustic fencing should be erected between such centres and neighbouring residences.

A number of submissions queried whether family day care (child care not in a centre) should be defined and regulated. Family day care use would be a Home based business but would probably not meet the floor area requirements of Clause 52.11 to be as of right in residential zones:

- The net floor area used in conducting the business including the storage of any materials or goods must not exceed 100 square metres or one-third of the net floor area of the dwelling, whichever is the lesser. The net floor area of the dwelling includes out-buildings and works normal to a dwelling.

A permit can be granted but only if the following condition is met:

- Which has a floor area not exceeding 200 square metres or one-third of the net floor area of the dwelling, whichever is the lesser.

Family day care might be analogous to Home based businesses or Bed and breakfast, both of which are permitted subject to certain limitations.

The Committee seeks submissions on the following question:

22. Should the VPP define Family Day Care and make it as of right where Home based business is as of right for fewer than, say, five children?

(i) What is the role of a Kindergarten?

No submissions have been received in relation to the definition of Kindergarten, even though it is currently undefined. Current research and policy in relation to early learning and benefits of early childhood learning in terms of outcomes for children leading into foundation years of primary school education. This is also reflected in the change in use of child care workers being recognised as “educators” and the move towards diploma based certification in child care centres.

The Committee seeks feedback as to whether Kindergarten should be moved from Child care centre and placed under the Education centre. Alternatively, Child care centre could be nested under Education centre.
The Committee seeks submissions on the following question:

23. Should Child care centre be nested under Education centre?

4.4 Earth and energy resources group

There were general submissions stating an overhaul of this Earth and energy resources group was required in order to incorporate or manage changes within the industry. Earth and energy resources industry and Stone extraction definitions are being considered through a separate process and fall outside of this review.

4.5 Education

Concerns were expressed that the definitions of education delivery models too narrow.

<table>
<thead>
<tr>
<th>Table 10: Education centre definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land use term</td>
</tr>
<tr>
<td>Education centre</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

Education centre is a broad definition, and while the nested terms are narrow, it is not clear that what additional term ought to be listed.

Concerns were raised over training that doesn’t provide a formal qualification (for example, gardening, potentially in community neighbourhood houses and the like)

In many cases education will be ancillary, or take place in what would otherwise be a Place of assembly. For example, training courses in a conference or function centre. This would not seem to be a normal part of that other use and a separate permission would not need to be sought.

It was suggested that there needs to be a distinction between private, public and not for profit providers, but it not clear why this is relevant from a planning perspective.

The Committee seeks submissions on the following question:

24. What new Education centre terms are needed and why?

4.6 Industry

Issues raised in relation to Industry uses included:

- General submissions to Industry
- Small scale food production
- Research and development centre
- Materials recycling, Transfer station and Refuse disposal
- Waste to energy facility
- Motor repairs.

(i) General submissions to Industry

There were general submissions made in relation to the Industry nesting group including:

- Deleting the industrial uses from Clause 74 and inserting them into Clause 52.10
• Whether Industry could be compartmentalised to be more narrowly defined\(^{15}\) to be more prescriptive of “heavy” and “light” Industry as currently occurs in New South Wales.

These submissions require a policy decision that falls outside the scope of this review.

(ii) **Breweries and tourist oriented industry**

It was submitted that micro-brewing is a new and emerging industry that could benefit from definition in the planning scheme. Currently it is an undefined use that falls within Industry or potentially Manufacturing sales.

In Clause 52.10 it would be categorised as ‘Food and Beverage Production other than those listed within this group’. As such, it would be prohibited in the Commercial 1 Zone and Township Zones. It would be subject to permit in the Farming Zone, and prohibited in the Green Wedge Zone.

The broader issue is whether breweries, distilleries or chocolate factories could be defined and treated the same way as wineries, on the basis these uses have a tourism orientation as much as an industry orientation.

**Table 11: Winery definition**

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Winery</td>
<td>Land used to display, and sell by retail, vineyard products, in association with the growing of grape vines and the manufacture of the vineyard products. It may include the preparation and sale of food and drink for consumption on the premises.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A **Winery** is different to these types of uses because it occurs “in association with the growing of grape vines and the manufacture of the vineyard products”.

The Committee seeks submissions on the following questions:

25. **Is there merit in defining Brewery, Distillery or Chocolate factory and other similar uses? If there is, how should they be treated in zones?**

(iii) **Research and development centre**

**Research and development centre** is being considered through another review process and falls outside the scope of this review.

(iv) **Materials recycling, Transfer station and Refuse disposal**

The Committee understands there is a Statewide Waste and Resource Recovery Plan (SWRRP) amendment process currently under way. This process will examine, among other issues, a land use and waste planning framework and will consider definitions relating to Materials recycling, Transfer station and Refuse disposal.

\(^{15}\) Alpine Shire considers small scale food production uses including a microbrewery, small coffee roaster and small gin distillery to be Manufacturing Sales.
Table 12: Waster transfer, recycling and disposal definitions

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer station</td>
<td>Land used to collect, consolidate, temporarily store, sort or recover refuse or used materials before transfer for disposal or use elsewhere.</td>
<td>Industry</td>
<td></td>
</tr>
<tr>
<td>Materials recycling</td>
<td>Land used to collect, dismantle, treat, process, store, recycle, or sell, used or surplus materials.</td>
<td>Industry</td>
<td></td>
</tr>
<tr>
<td>Refuse disposal</td>
<td>Land used to dispose of refuse, by landfill, incineration, or other means.</td>
<td>Industry</td>
<td></td>
</tr>
</tbody>
</table>

It is not clear to the Committee why a Transfer station deals with “refuse or used materials”, but a Material recycling deals with “used or surplus materials”. Could both deal with “refuse, used or surplus materials”?

It is also not clear what the practical differences are between “temporarily store” in Transfer station and “store” in Materials recycling.

Generally the difference between the uses seems clear, with the Transfer station being a stop on a journey, whereas Material recycling is a facility where material is processed. Deleting “collect” from the Material recycling definition might make this distinction clearer without having any practical implications.

Clause 52.45, Resource recovery, sets out application requirements and decision guidelines for these uses with the purpose:

To facilitate the establishment and expansion of a Transfer station and/or a Materials recycling facility in appropriate locations with minimal impact on the environment and amenity of the area.

The Committee seeks submissions on the following questions:

26. Is there merit in changing Transfer station to read:
    Land used to collect, consolidate, temporarily store, sort or recover refuse, or used or surplus materials before transfer for disposal, recycling or use elsewhere?

27. Is there merit in changing Materials recycling to read:
    Land used to collect, dismantle, treat, process, store, recycle, or sell, refuse, used or surplus materials?

(v) Waste-to-energy facility

At present a waste to energy plant would seem to fall under the term Refuse disposal. Waste to energy clearly does not fall into the definition of a Renewable energy facility, and while there may be environmental benefits from a waste-to-energy plant it is not a renewal resource.

The Committee seeks submissions on the following questions:

28. Should there be a Waste-to-energy facility definition?
(vi) Motor repairs

The only submissions received in relation to the nesting of terms for Service Industry relate to self contained pods being used for minor repairs on cars and whether this needs to be considered in the definition of Motor repairs. These pods were submitted as being capable of being placed anywhere, including as an ancillary use on land where the dominant use is a shop, carpark or warehouse. The submitter contended that there was no need for land use planning control for such a proposition, whereas it may unnecessarily be caught by Motor repairs.

If there is merit in supporting this type of activity it may need to be managed by a set of particular provisions. While it may be unworkable to require a permit for each operation there may still be a need to manage the use.

The Committee seeks submissions on the following questions:

29. If there is merit in supporting pod based motor repairs through and new definition and a particular provision? Are there other pod based businesses that may require the same approach?

4.7 Leisure and recreation

Issues raised in relation to Leisure and recreation uses included:

- Major versus minor
- Restricted recreation facility v Indoor recreation facility
- What’s going on outside?
- Specific terms
- Indoor versus outdoor
- Motor racing track.

(i) Major versus minor

The terms Major sports and recreation facility and Minor sports and recreation facility do not really communicate their purpose: the distinction is whether there is substantial provision made for spectators, such as a grandstand, and whether spectators are usually charged admission.

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major sports and recreation facility</td>
<td>Land used for leisure, recreation or sport, and where there is substantial provision made for spectators, such as a grandstand, and to which spectators are usually charged admission.</td>
<td>Racecourse</td>
<td>Leisure and recreation</td>
</tr>
<tr>
<td>Minor sports and recreation facility</td>
<td>Land used for leisure, recreation, or sport, without substantial provision for spectators, and which is usually open to non-paying spectators.</td>
<td>Indoor recreation facility, Informal outdoor recreation, Open sports ground, Outdoor recreation facility, Restricted recreation facility</td>
<td>Leisure and recreation</td>
</tr>
</tbody>
</table>
The Committee seeks submissions on the following question:

30. Should Major sports and recreation facility be renamed Spectator sports facility, and Minor sports and recreation facility be renamed Community sports and recreation facility?

(ii) Restricted recreation facility versus Indoor recreation facility

The issue here is if a person pays a fee to learn to dance it is an Indoor recreation facility, but if they pay a fee to learn yoga it is potentially a Restricted recreation facility.

It seems the intent of the Restricted recreation facility is to capture clubs, but because it refers to “Land used ... the public on payment of a fee” it could be taken to cover a range of small commercial operations that would otherwise fall under Indoor recreation facility. Submissions called for this distinction to be clear.

Table 14: Indoor recreation facility and Restricted recreation facility definitions

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indoor recreation facility</td>
<td>A building used for indoor leisure, recreation, or sport.</td>
<td>Dancing school</td>
<td>Minor sports and recreation facility</td>
</tr>
<tr>
<td>Restricted recreation facility</td>
<td>Land used by members of a club or group, members’ guests, or by the public on payment of a fee, for leisure, recreation, or sport, such as a bowling or tennis club, gymnasium and fitness centre. It may include food and drink for consumption on the premises, and gaming. It may also include use by members’ guests, or by the public on payment of a fee.</td>
<td></td>
<td>Minor sports and recreation facility</td>
</tr>
</tbody>
</table>

The Committee seeks submissions on the following question:

31. Should Restricted recreation facility be changed to read: Land used by members of a club or group, members’ guests, or by the public on payment of a fee, for leisure, recreation, or sport, such as a bowling or tennis club, gymnasium and fitness centre. It may include food and drink for consumption on the premises, and gaming. It may also include use by members’ guests, or by the public on payment of a fee.

(iii) What’s going on outside?

Some submissions sought clarification on public parks and plazas. The Committee’s review of Informal outdoor recreation, Open sports ground and Outdoor recreation facility reveals an overlap in the definitions that could be removed:

- “Land used for outdoor ... sport” would seem to include “Land used for sport, but which is available for informal outdoor leisure or recreation when not being used or prepared for an organised game”.
- Similarly “Land used for outdoor leisure” would seem to include “Land open to the public and used by non-paying persons for leisure”. The issue is the relevant definitions are not nested.

Table 15: Outdoor recreation facility definitions showing possible changes

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
</table>
Informal outdoor recreation  Land open to the public and used by non-paying persons for leisure or recreation, such as a public plaza, public park, cycle track, picnic or barbecue area, playground, and walking or jogging track.

Minor sports and recreation facility

Open sports ground  Land used for organised games of sport, but which is available for informal outdoor leisure or recreation when not being used or prepared for an organised game. It may include lights, change rooms, pavilions, and shelters.

Minor sports and recreation facility

Outdoor recreation facility  Land used for outdoor leisure, recreation, or sport.

It does not include an Open sports ground or Informal outdoor recreation.

Amusement park
Golf course
Golf driving range
Paintball games facility
Zoo

Minor sports and recreation facility

The Committee seeks submissions on the following question:

32. Should the potential overlap between Informal outdoor recreation, Open sports ground and Outdoor recreation facility be clarified? Do you support the proposed clarification?

(iv) Specific terms

It was submitted that the terms generally needed updating to better reflect contemporary terms, including, for example, a virtual reality recreation centre.

There was a concern that Dancing school was no longer needed. The Committee observes that dance studios are a surprisingly popular land use.

A number of stakeholders called for new definitions for Gym, Personal training, Pilates and Yoga studios. These uses fall clearly in the definition of Indoor recreation facility.\textsuperscript{16} Listing them could help remove confusion about how they are defined.

Many of these uses take up shop fronts in a Commercial 1 Zone; they need a permit for this. Rather than provide new definitions, the critical issue would seem to be greater flexibility in zone controls to allow these uses to establish in shop fronts.

Table 16: Indoor recreation facility definition

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indoor recreation facility</td>
<td>A building used for indoor leisure, recreation, or sport.</td>
<td>Dancing school</td>
<td>Minor sports and recreation facility</td>
</tr>
</tbody>
</table>

The Committee seeks submissions on the following questions:

33. Is there merit in treating shop front style recreation facilities more like shops?

34. Should the VPP list Gym, Pilates studios and Yoga studio in Clause 74, nested under Indoor recreation facility, but not defined?

\textsuperscript{16} At least they do if the Restricted recreation facility is made more focused
35. Should Dancing school be changed to Dance studio?

(v) Indoor versus outdoor

Most Outdoor recreation facilities will have a club house, and many Indoor recreation facilities will have some outdoor areas. It is not clear if this is an issue.

The Committee seeks submissions on the following question:

36. Is the indoor–outdoor distinction for recreation facilities causing problems? If so, changes are needed to resolve these problems?

(vi) Motor racing track

Motor racing track does not include ‘training’; and it was submitted that it should. A ‘motor training track’ seems to fall under Leisure and recreation. There is potential for a motor training track to be treated more liberally than a Motor racing track. In an Industrial 3 Zone for example, a Motor racing track would be prohibited, but a permit could be sought for a training facility.

The Committee seeks submissions on the following question:

37. Why is there a need to include training in Motor racing track?

4.8 Office

(i) Medical centre and Hospital

There were limited submissions received in relation to this nesting of terms, with the only submissions received relating to the definition of Medical centre. Some specific submissions sought clarification around the “providing health service” aspect of the definition and whether this included nurses. It is not apparent to the Committee why this distinction in relation to nurses needs to be made.

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical centre</td>
<td>Land used to provide health services (including preventative care, diagnosis, medical and surgical treatment, and counselling) to out-patients only.</td>
<td></td>
<td>Office</td>
</tr>
<tr>
<td>Hospital</td>
<td>Land used to provide health services (including preventative care, diagnosis, medical and surgical treatment, and counselling) to persons admitted as in-patients. It may include the care or treatment of out-patients.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

One submitter suggested framing Medical centre to be a “consultative service” so as to encompass similar “non-medical” purposes such as naturopathy, although this may be redundant as the definition of Office references “professional” activity and a planning permit can describe the use as ‘Naturopathy (Medical centre)’. A more basic issue is that not everyone would consider naturopathy to be medicine.
The Committee notes that the difference between a Hospital and a Medical centre hinges on whether the facility treats ‘in-patients’ or ‘out-patients’. The Committee understands that in the medical world:

- some in-patients, whilst admitted, are not present at a facility – they may be treated by way of a ‘hospital in the home’ service
- some outpatients may stay overnight at a facility.

The Committee seeks submissions on the following question:

38. **Is there a need to amend the definition of Medical centre, and what precise change is required?**

### 4.9 Place of Assembly

There were a number of submissions about Place of assembly. Some submitters contended the term was too broad, but others thought it was too limiting. Submissions raised issues about:

- Cinema Based Entertainment Facility
- Commercial art galleries
- Amusement parlour
- Carnival and Circus
- Festival – Music and Arts Festival
- Function centre – Conference centre – Reception Centre
- Place of Worship

(i) **Cinema Based Entertainment Facility**

A submission suggested shifting Cinema based entertainment facility from an unnested use to Place of assembly. This makes sense given the nature of the use.

**Table 18: Cinema type definitions**

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cinema</td>
<td>Land used to provide screen based entertainment or information to the public.</td>
<td></td>
<td>Place of assembly</td>
</tr>
<tr>
<td>Cinema based entertainment facility</td>
<td>Land used to provide screen based entertainment or information to the public, in association with the provision of meals or sporting, amusement, entertainment, leisure or retail facilities.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drive-in theatre</td>
<td></td>
<td></td>
<td>Place of assembly</td>
</tr>
</tbody>
</table>

**Drive-in theatre** is not defined but is nested under Place of assembly. Drive-in theatre seems to be a redundant term considering the broad definition of Cinema and Cinema based entertainment facility, but the Committee recognises that drive-in theatres do still exist and as a concept may still be pursued. A Drive-in theatre will have a vastly different impact to a Cinema.

The Committee seeks submissions on the following question:

39. **Should Cinema based entertainment facility be nested under Place of assembly?**
40. Should the definitions of Cinema and Cinema based entertainment facility specifically exclude a Drive-in theatre?

(ii) Commercial art galleries

Concerns were raised about the difficulties of conducting small scale art screenings, especially screenings that may occur in shop galleries.

This is a similar issue to a number of Indoor recreation facility uses take up shop fronts in a Commercial 1 Zone and need a permit for this.

(iii) Amusement parlour

It was submitted that the term Amusement parlour is too specific and outdated. The Committee understands that the function of this definition is to establish planning control over establishments with more than two pinball machines, making it clear that three or more machines are not ancillary to another use. This was once a significant planning issue.

(iv) Carnival and Circus

There was a submission that the definitions for Carnival and Circus should be updated to apply to non-public land. The Committee understands that the definitions do apply to non-public land, but that:

- Clause 62.01 states that any requirement in this scheme relating to the use of land, other than a requirement in the Public Conservation and Resource Zone, does not apply to the use of land for a Carnival or Circus if the requirements of A ‘Good Neighbour’ Code of Practice for a Circus or Carnival, October 1997 are met.
- These uses are currently exempt from planning permission on public land because of Clause 62.03.

(v) Festival – Music and Arts Festival

There was a submission that there should be a further nested term called Events and music and arts festivals could fall under them.

In MAMF Functions Pty Ltd v Buloke SC (Red Dot) [2016] VCAT 289 the Tribunal considered the proposal to hold a music and arts festival on public land and whether a planning permit for Place of assembly was required to be sought or whether the music festival could be characterised as an innominate use.

Clause 62.03 was discussed as this provides an exemption to allow for temporary events on public land provided the public land manager authorises the event and this could arguably have applied in this case.

VCAT considered the principles the Committee has discussed earlier in this discussion paper, specifically the Cascone case. VCAT considered what was the real and substantial purpose of the use that a planning permit was being sought and determined that the description in the planning permit of ‘Music and Art Festival (Place of assembly)’ was accurate and proper, with there being no benefit in removing Place of assembly from the planning permit description. This premise was based on the view that the use was properly characterised as Place of assembly or as an innominate use still generally falling within the broader land use
definition of a Place of assembly having regard to the hierarchy and nesting of land use terms within the planning scheme\textsuperscript{17}.

VCAT determined the general definition of Place of assembly could comfortably accommodate music and arts festival as Place of assembly encompasses a variety of specific land uses that can either be defined or are innominable, with the common criteria being the congregation of people for a cultural or entertainment activity. VCAT noted that the Council would not inadvertently grant the applicant a general permission by simply stating Place of assembly in the preamble of the planning permit. Rather Council would seek to further specify what use has been given permission under the planning permit, in this case arts and music festival.

VCAT also considered whether the use of the land for an arts and music festival amounted to an ancillary or separate use of the land when the factor of camping was also included as a use of the land. The Tribunal formed the view that this combination did not create a new or unusual innominable use and remained an appropriate Place of assembly use.

The Committee does not see the need to introduce art and music festival as a land use term to be nested under Place of assembly.

(vi) Function centre – Conference centre – Reception Centre

Whilst no submissions were received in relation to the definitions of these terms, both Conference centre and Reception centre are terms that are undefined but nested under Function centre.

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Function centre</td>
<td>Land used, by arrangement, to cater for private functions, and in which food and drink may be served. It may include entertainment and dancing.</td>
<td>Conference centre, Reception centre</td>
</tr>
<tr>
<td>Conference centre</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reception centre</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

These terms may require modernising and the Committee invites submissions as to whether Conference centre is now the more generic term and should replace Function centre as the head term under Place of assembly.

The Committee notes that the definition of Function centre does not seem to include public conferences.

The Committee seeks submissions on the following question:

41. Should Conference centre be the head term instead of Function centre?

42. Should Function centre (or Conference centre if it becomes the head term) be updated to read:

\textbf{Land used, by arrangement, to cater for conferences or private functions, and in which food and drink may be served. It may include entertainment and dancing?}

\[\text{[6]}\]
(vii) **Place of Worship**

There were submissions that claim the definition of Place of worship is too limiting and should be expanded to include other activities where a number of people may practice that common faith.

The Committee acknowledges that there are activities which bring people together that do not necessarily have a religious basis to it, but may be more akin to being a spiritual one. However, others may form the view that the inherent meaning of this term is for the use and development of the land to construct structures that readily relate to a recognised religion, as opposed to a spiritual event that can be held in a library or local hall.

The Committee notes the recent Supreme Court judgement of Justice Emerton in *RSSB Australia Pty Ltd v Ross* [2017] VSC 314, in which the Tribunal had to consider the nature of the activities and their purpose to ascertain the correct land use term to determine the appropriate planning controls. One of the questions considered was whether the RSSB was a “religion” and could rely on the land use term Place of worship. Justice Emerton accepted the submission that noted a liberal approach to the interpretation of this land use may be warranted.

The Committee seeks submissions on the following question:

43. **Should Place of assembly, Place of worship and Restricted place of assembly be revised to include “spiritual” activities?**

44. **Should the Place of worship definition be changed to recognise that some religious or spiritual activities occur in non specific or non denominational buildings?**

(viii) **Live Music – Live Music Venue**

There is a Planning Practice Note 81 (May 2016) which specifically provides guidance in relation to the planning controls relating to Live Music and Entertainment Noise, managing the agent of change principle and Clause 52.43. This is a land use term that is not currently defined in the VPPs. This Planning Practice Note provides examples of some of the various venues that can be turned into a live music venue. The question then becomes one of whether the venue will be predominantly a live music venue, with possible ancillary food and alcohol to be served or whether it will be a pub or restaurant that occasionally plays live music.

It is not clear to the Committee whether a dedicated land use definition is required or whether the current land use definition of Nightclub is sufficient to regulate the use of a venue (albeit one where there is no gaming or sale of packaged liquor).

The Advisory Committee invites submissions as to whether:

45. **Should Live music venue be listed in Clause 74, and if so how would it be defined?**
4.10 Renewable Energy group

(i) Renewable Energy Group

There were a number of submissions stating that this nesting group should have sufficient definitions that are flexible enough to provide current but future proofed definitions of the kind of facilities for evolving energy resources. This would have the result of the focus being on the impact rather than the form, which is consistent with one of the broader principles of considering the purpose of the use.

The Committee notes that the term **Renewable energy facility** is being examined under the SWRRP to include further aspects to the definition. On that basis, the Committee believes this falls outside the scope of its review.

(ii) Solar farm

There was a submission stating that the term solar farm required definition in order to future proof this form of **Renewable energy facility**. There was a recent Advisory Committee established to consider a call in of a VCAT case relating to the expansion of the Countrywide Energy Solar Farm in Wangaratta North, however, that matter did not appear to raise any issues in the land use definition of a solar farm. The Committee does not propose to introduce a definition for solar farm, however, it invites submissions as to whether it should consider introducing a new definition of solar farm that could be drawn on the current **Wind energy facility** definition.

The Committee seeks submissions on the following question:

46. Should a definition for **Solar farm**, based on the current definition for **Wind energy facility**, be included in Clause 75?

4.11 Retail premises

Issues raised in relation to **Retail premises** uses included:

- **Food and drink:**
  - New definitions
  - Tables in a takeaway
  - Deliveroo and Uber eats
  - Bar, nightclub or venue.
- **Shop:**
  - Small performances in shops
  - Small food manufacturing
  - Personal services – days spaces and massage parlours.
- **Restricted retail premises.**

4.11.1 Food and drink premises

(i) New definitions

Many submissions said there should be new or refined definitions to:

- define **Cafe**
- define **Bar**
- address food trucks.
There are three definitions that relate to primarily to the sale of food:

Table 20: Sale of food definitions

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Take away food</td>
<td>Land used to prepare and sell food and drink for immediate consumption</td>
<td></td>
<td>Food and drink premises</td>
</tr>
<tr>
<td>premises</td>
<td>off the premises.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Convenience</td>
<td>Land used to prepare and sell food and drink for immediate consumption,</td>
<td></td>
<td>Food and drink premises</td>
</tr>
<tr>
<td>restaurant</td>
<td>where substantial provision is made for consumption both on and off</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>the premises.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restaurant</td>
<td>Land used to prepare and sell food and drink, for consumption on the</td>
<td></td>
<td>Food and drink premises</td>
</tr>
<tr>
<td></td>
<td>premises. It may include:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a) entertainment and dancing; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b) the supply of liquor other than in association with the serving of</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>meals, provided that tables and chairs are set out for at least 75% of</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>patrons present on the premises at any one time.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>It does not include the sale of packaged liquor.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A Cafe would seem to be a Convenience restaurant. While some submissions took issue with Convenience restaurant, on the basis that it was not needed, it appears to the Committee to be clearly aimed at suburban fast food establishments.

The Committee is of the view that Bar is clearly falls within Tavern.

Clause 62 says any requirement in this scheme relating to the use of land, does not apply to the use of land in a road to trade from a stall, stand, motor vehicle, trailer, barrow or other similar device. It would seem planning schemes only apply to food trucks if they are parked on private land. The Committee does not see the need, or merit, to change this arrangement.

The Committee seeks submissions on the following questions:

47. Should the VPP list Bar in Clause 74 and nest it in Tavern without a definition?

48. Should the VPP list Cafe in Clause 74 and nest it in Convenience restaurant without a definition?

(ii) Tables in a takeaway

It was submitted that a takeaway should be allowed to have up to six tables. This seem appropriate, and the Committee does not see that this would change the fundamental purpose of the use.

The Committee seeks submissions on the following question:

49. Is it appropriate to change the definition of Take away food premises to allow for a certain number of table or seats? What number?

———

19 Other than a requirement in the Public Conservation and Resource Zone.
(iii) Deliveroo and Uber Eats

An emerging issue is the increasing proportion of some restaurants takeaway food trade with online delivery services. A degree of takeaway food has always been part of a restaurant business, but at some point the proportion of takeaway service could increase until it was no longer ancillary. Such an establishment might then be seen as a Convenience restaurant.

It is not clear to the Committee if this is causing practical or legal difficulties for operators.

It is not clear to the Committee that there are any zones where this would make an as of right use require a permit. In the Commercial 1 Zone neither Restaurant nor Convenience restaurant require a permit. It appears to the Committee that there would be no change or a reduction in the car parking requirement.

A ‘dark kitchen’ would seem to be a Take away food premises. It does not seem relevant whether the person picking up the takeaway is picking it up for their own consumption or someone else.

(iv) Bar, nightclub or venue

It was submitted that the planning system does not deal well with arts venues and part of the mismatch is due to arts and cultural spaces becoming smaller and more casual in their offerings. For example, small ‘do it yourself’ screen cinemas didn’t exist in the 1960s. Spaces are also becoming more hybrid: a small Bar may host occasional art exhibitions, poetry readings, comedy acts, live music and film screenings.

Concerns were expressed over how a small hybrid venue would be treated in the planning system. Use as an art gallery is Exhibition centre, which is a Place of assembly. Comedy or live music performances could require the place be classified as Nightclub (Place of assembly) or Tavern (Retail Premises). Film screenings might make a use a Cinema (Place of assembly). It was said:

As all of these uses require individual permissions, the process of wading through the scheme, commissioning supporting reports (such as traffic), and making the applications at considerable expense and effort, is a major disincentive to activities that are otherwise expressly encouraged in state and local policy frameworks.

The Committee observes that a Bar is a Tavern which is defined as:

Land used to sell liquor for consumption on the premises. It may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines, and gambling.

The Committee accepts that display and sale of art work if not ancillary would be a separate use. Poetry readings, comedy acts, live music and film screenings are presumably entertaining and should not be an issue in a Bar. The issue is if these uses mean the purpose of the establishment changes to a Nightclub or Cinema.

---

20 A take away food premises that aimed solely at internet orders, without a visible street presence.
Table 21: Nightclub definition

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nightclub</td>
<td>A building used to provide entertainment and dancing. It may include the provision of food and drink for consumption on the premises. It does not include the sale of packaged liquor, or gaming.</td>
<td></td>
<td>Place of assembly</td>
</tr>
</tbody>
</table>

The Committee seeks submissions on the following questions:

50. What is the best way to cater for small arts venues in Clause 74:
   a) Don’t change anything
   b) Create a definition of Arts venue and nest in Place of assembly
   c) Create definition of Arts venue and nest under Tavern
   d) Something else?

51. What would be an appropriate definition for a small arts venue?

4.11.2 Shop

(i) Small performances in shops

A submitter stated that musicians performing in record stores are being shut down because according to council officers, separate planning permission is required. Demonstrating products, including music, should not be controversial in a shop. It is not much different to a book launch or book signing in a book store. If the basic purpose changes from selling goods to providing entertainment then a separate planning permission may well be appropriate. This would be addressed by the proper application of legal principles pertaining to uses.

The Committee seeks submissions on the following questions:

52. Is there merit in amending Shop to include:

   It includes demonstrations of products including music performances in shops selling recorded music.

(ii) Small food manufacturing

An emerging issue is the manufacture and sale of bespoke food items. These can be classed as Industry and by dint of Clause 52.10 prohibited in a Commercial 1 Zone.

The definition of shop makes it clear that a local bakery is a shop, so the Committee cannot see the difficulty with other small scale food production activities.

The Committee seeks submissions on the following question:

53. Is there merit in amending Shop to include:

   It includes the selling of food products prepared on the premises.

(iii) Personal services – days spaces and massage parlours

Submissions called for definitions of day spas, massage parlours and animal grooming. These uses are akin to a Hairdresser and would seem to fall squarely within Shop.

The Committee seeks submissions on the following question:
54. Should the VPP list Day spa, Massage parlour, and Animal grooming in Clause 74 nested under Shop, but not defined?

4.11.3 Restricted retail premises

It was submitted that provision needs to be made for Model shop or Hobby shop. It was explained that these shops sell large remote control equipment and could have a specific listing in the Restricted retail premises.

The definition of Restricted retail premises includes:

m) goods and accessories which:

• Require a large area for handling, display and storage of goods; or
• Require direct vehicle access to the building by customers for the purpose of loading or unloading goods into or from their vehicles after purchase or hire.

It would seem that these uses should already be captured by the Restricted retail definition, but submitters spoke of enforcement action against some operators.

The Committee seeks submissions on the following questions:

55. Should ‘remote controlled equipment’ be added to Restricted retail premises?

4.12 Transport terminal group

(i) Railway station and Railway, Road and Tramway

Tramway is currently an unnested but defined land use term under Clause 74.

Table 22: Tramway definition

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tramway</td>
<td>Land used to provide a system of transport in vehicles connected to a network of tracks, and includes tram stops, shunting areas and associated passenger facilities.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Arguably some of those aspects of that definition would require Tramway to be nested under Transport Terminal Group, however, it is not a neat nesting as is currently defined.

The purpose of the Tramway definition is to remove the need for planning permits for tram stop upgrades. In the past these have been subject to VCAT appeals.

There were a number of submissions that suggested the land use term Railway station needed expanding beyond its current definition in order to reference the entire corridor.

Another submission stated that the better definition for Railway station should be obtained from the “Railway Infrastructure” definition set out in the Rail Management Act 1996 (Victoria). It is not the Committee’s view to disturb the long-held principle to avoid adopting directly the definition of a term from one legislative instrument into the land use terms definitions of the VPP.

Table 23: Railway station definition

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Railway station</td>
<td>Land used to assemble and distribute goods and passengers and includes facilities to park and manoeuvre vehicles. It may include the selling of food, drinks and other convenience goods and services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transport terminal</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A submitter stated that Railway station should be removed from Transport Terminal Group and made into a Section 2 use in a number of zones (whereas it is currently a Section 3 use in some zones).

Submissions also called for a definition of Road.

The Committee seeks submissions on the following questions:

56. Should Railway be defined as an unnested term and include Railway station?

57. What is the appropriate definition for Road?

(ii) Airport and airfield

There was a submission that the Committee should refine and clarify the difference between Airport and Airfield. These terms are used in the State Planning Policy Framework in the VPP. Whilst nested under Transport terminal, Airport is not defined and Airfield is not listed.

It appears the subtle difference between an Airport and airfield is that in addition to being land used for allowing planes to take off and land, an Airport has a terminal, paved runways and more than one runway whereas an airfield does not.

There have been a number of VCAT cases where an Airfield has been determined to be an ancillary use of the dominant purpose of the land.

At this stage the Committee cannot see the need define the difference between an Airport and airfield. Unless the Committee receives further submissions on the need for, and distinguishing features between Airport and Airfield, it does not propose to define Airfield.

(iii) Heliport and Helicopter landing site

The Committee notes that:

- Heliport is nested under Transport terminal but is not defined in Clause 74
- Helicopter landing site is defined but unnested.

A planning permit is required for either use under Clause 52.15 of the VPP unless a relevant exemption applies, however, it is unclear the need for term of Heliport, unless this is where the term is referencing permanent facilities for the assembly and distribution of goods or passengers.

The Committee notes the Practice Note 75 December 2012 which sets out the “Planning requirements for heliports and helicopter landing sites”. This Practice Note acknowledges that a:

... heliport would normally have one or more helipads, with facilities for passenger handling such as a terminal building. It may also include facilities such as a hangar, refuelling and lighting.
The Committee understands these terms have recently been the subject of various reviews, such as a 2014 Helicopter Landing Site Review where submitters suggested removing the term Heliport and retaining Helicopter landing site. The Committee also notes the recent Planning Scheme Amendment GC49 relating to hospital helicopter landing sites.

While there may be some logic in nesting a Helicopter landing site under Transport terminal, the Committee does not propose such a nesting. The term has been specifically created to require planning permission for helicopter landings in the face of arguments that these landings were ancillary to the primary use of the land.21 It is not clear that such uses will always involve the activities of “assemble and distribute goods or passengers” and the definition is created to deal with these instances.

The Committee seeks submissions on the following question:

58. Is it appropriate to delete Heliport?

4.13 Utility installation group

Consultation to date has raised the following issues:

- Include electric car charging point
- Amend minor utility installation definition to define extent of ‘neighbourhood’
- Clarify the difference between ‘utility installation’ and ‘minor utility installation’ and potentially consolidate.

Table 24: Utility definitions

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility installation</td>
<td>Land used:</td>
<td>Minor utility installation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a) for telecommunications;</td>
<td>Reservoir</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b) to transmit or distribute gas,</td>
<td>Telecommunications</td>
<td></td>
</tr>
<tr>
<td></td>
<td>oil, or power;</td>
<td>facility</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c) to collect, transmit, store,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>or distribute water; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>d) to collect, treat, or dispose of</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>storm or flood water, sewage, or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>sullage.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>It includes any associated flow</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>measurement device or a structure</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>to gauge waterway flow.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

21 Proposals for helipads have from time to time caused angst amongst neighbours and resulted in changes to planning controls. Significant cases include Alfred Hospital v City of Melbourne & Mirvac Pty Ltd and Ors (1983) 1 PABR 334, Grollo Group v City of Preston and Ors (1986) 4 AATR 113 (editorial comment 4 AATR 113), Mornington Peninsula SC v Fox and Ors [2003] VCAT 772 14 VPR 130 (editorial comment 14 VPR 129) and Bos v Manningham CC [2004] (Red Dot) VCAT 1048 (editorial comment 20 VPR 4).
<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecommunications facility</td>
<td>Land used to accommodate any part of the infrastructure of a Telecommunications network. It includes any telecommunications line, equipment, apparatus, telecommunications tower, mast, antenna, tunnel, duct, hole, pit, pole, or other structure or thing used, or for use in or in connection with a Telecommunications network.</td>
<td>Water retarding basin</td>
<td>Utility installation</td>
</tr>
<tr>
<td>Minor utility installation</td>
<td>Land used for a utility installation comprising any of the following: a) sewerage or water mains; b) storm or flood water drains or retarding basins; d) gas mains providing gas directly to consumers; e) power lines designed to operate at less than 220,000 volts; f) a sewage treatment plant, and any associated disposal works, required to serve a neighbourhood; g) a pumping station required to serve a neighbourhood; or h) an electrical sub-station designed to operate at no more than 66,000 volts. It includes any associated flow measurement device or a structure to gauge waterway flow.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(i) **Include electric car charging point**

The issue is whether an electric vehicle charging point is a land use or a piece of street furniture. The Committee does not see that charging an electric vehicle is a distinct land use – in the future it will be as normal to a car park as line making. Others may disagree and see it more akin to a Service station.

(ii) **Define extent of ‘neighbourhood’**

Minor utility installation includes:

   f) a sewage treatment plant, and any associated disposal works, required to serve a neighbourhood

   g) a pumping station required to serve a neighbourhood.

Submitters said that neighbourhood should be defined. The Committee agrees and thinks a simple area extent, so many hectares, or pumping capacity, say up to 200 L/s, would make the term easy to use.

The Committee seeks submissions on the following questions:

59. What specific limit should be placed on pumping stations in Minor utility installation?
(iii) Water extraction

Water extraction is not covered by the VPP.

In *Stanley Pastoral Pty Ltd v Indigo SC (Red Dot) [2015] VCAT 1822*, the Tribunal considered an appeal against a decision of the Responsible Authority to refuse a permit to extract groundwater:

> Both the responsible authority and the applicant contend that the proposal comes within this definition [of Utility installation]. The Tribunal is satisfied that the proposal accurately answers the definition of Utility installation.

However, Section 8(6)(b) of the *Water Act* provides:

> A right conferred by this section is limited only to the extent to which an intention to limit it is expressly (and not merely impliedly) provided in—

> (b) any other Act or in any permission or authority granted under any other Act; …

VCAT found that no permit was required.

Stanley Community Incorporated, sought a review of the Tribunal's decision (*Stanley Rural Community Inc v Stanley Pastoral Pty Ltd [2016] VSC 764*). It submitted that legislation governing licences for water allocations was no different from the detailed legislation that provided for specific controls and permissions over other issues that intersect with the planning system.\(^{22}\)

In dismissing the appeal, the Court held:

> The operation of ss 8(4) and (6) of the Water Act, combined with the absence of any express provision in the Planning and Environment Act and/or [the planning scheme] qualifying the rights conferred upon [Stanley Pastoral] by the take and use licence, was fatal to Stanley Community Incorporated’s appeal.

The Committee seeks submissions on the following question:

60. Is there merit in making it explicit in the VPP that no permit is required for water extraction? Are development controls needed?

(iv) Is this a land use issue?

While it may not be appropriate to require a land use permit for a Minor utility installation there may be merit in controlling buildings and works. A number of submitters suggested this approach.

Clause 52.19 Telecommunications facility requires a permit to construct a building or construct or carry out works for a Telecommunications facility, subject to certain exemption.

The Committee seeks submissions on the following questions:

\(^{22}\) Including subdivision, building, heritage, environment, noise, dust, traffic and transport, liquor, sex work, gambling and many other matters including the extraction of other natural resources.
61. **Is there merit in introducing a particular provision to specify building and works requirements for a Minor utility installation similar to 52.19 Telecommunications facility.**

### 4.14 Warehouse group

It was submitted that terms generally need updating to be more reflective of contemporary terms, but no specific suggestions were made.

Areas where there is confusion and request for clarification:
- Vehicle depot
- Contractors depot
- Self-storage facilities
- Shipping containers as ancillary buildings.

#### (i) Clean fill storage

It was suggested that here needed to be a definition for **Clean fill storage**. If this is seen as necessary it would seem most appropriate to amend the definition of **Earth and energy resources industry** to include ‘storage’. This term is subject to a separate review.

**Table 25: Possible change to Earth and energy resources industry**

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Earth and energy resources industry</td>
<td>Land used for the exploration, removal, storage, or processing of natural earth or energy resources. It includes any activity incidental to this purpose including the construction and use of temporary accommodation.</td>
<td>Clean fill storage</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Greenhouse gas sequestration</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Greenhouse gas sequestration exploration</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Geothermal energy exploration</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Geothermal energy extraction</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mineral exploration</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mineral extraction</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Petroleum exploration</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Petroleum extraction</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stone exploration</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stone extraction</td>
<td></td>
</tr>
</tbody>
</table>

#### (ii) Vehicle depot

Submissions sought clarification around the issue of a vehicle depot as distinct from a vehicle store. It is not clear to the Committee what the precise issue is.

**Table 26: Vehicle store and related definitions**

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Car park</td>
<td>Land used to park motor vehicles.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(iii) Contractors depot

A number of submissions called for a definition of Contractors depot. Part of this concern was to allow for the temporary use of land as a Contractors depot.

The Committee seeks submissions on the following questions:

62. Is there merit in introducing a definition of Contractors depot and allowing the temporary use of land for a Contractors depot in certain circumstance?

(iv) Self-storage facilities

A number of submissions called for a definition of Self-storage facilities.

The Committee seeks submissions on the following questions:

63. Should the VPP list Self-storage facility in Clause 74 nested under Store, but not defined?

(v) Shipping containers as ancillary buildings

The Advisory Committee noted the VCAT Red Dot decision of Watson v Monash CC (In Summary) (Red Dot) [2011] VCAT 2176 in which the Tribunal considered whether a shipping container constituted a “structure” for the purposes of the “building” definition. However, as the shipping container would be ancillary to an existing “shop” use, no “use” approval was needed.

4.15 Other issues

(i) Car park

It was submitted that Car park should only apply to where there is a payment of fee, otherwise it is ancillary.

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Car park</td>
<td>Land used to park motor vehicles.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

As the Committee understands it, the term car park is used to prevent car parking that services uses in one zone, for example the Commercial 1 Zone, spilling over into an adjoining zone where that use might be prohibited.
Whether the people using the parking pay a fee or not is largely irrelevant from a planning point of view.

It might be worth clarifying that a car park can include charging for electric vehicles.

The Committee seeks submissions on the following questions:

64. **Should Car park include:**

   *It may include charging of electric vehicles?*

(ii) **Display village**

It was submitted that **Display home** could be improved by defining **Display village**.

A simple response is that a **Display village** is simply a collection of **Display homes** and no specific definition is required. However, the Committee notes that sometimes **Display villages** have other amenities such a cafe and it might be worth addressing this.

**Table 28: Display home definition**

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Display home</td>
<td>A building constructed as a dwelling, but used for display, to encourage people to buy or construct similar dwellings.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Committee seeks submissions on the following questions:

65. **Is there merit in defining Display village, and what should it include?**

(iii) **Pop up shop or galley**

Pop up galleries or shops can be a way of activating vacant buildings. To the extent that this keeps activity centre active and attractive it would have broad policy support in the VPP.

Because an **Art gallery** is not **Retail premises**, it can require a permit in a Commercial 1 Zone. There is a broader issue of how an Art gallery should be treated in the VPP but there appears to be merit in defining a temporary, non-commercial pop up galley.

The Committee seeks submissions on the following questions:

66. **Is there merit in defining a use aimed at capturing pop up galleries or shops? If so what should it include, and what limits should be applied?**
5 Practical implications

The Committee’s Terms of Reference require it to advise on:

- Legal and practical implications of any recommended changes to land use terms and their definitions. These include:
  - existing use rights implications
  - consequential changes to the VPP (such as changes to zone land use tables, general terms and nesting diagrams)
  - potential impacts on users of the planning system.

- With regard to the identified legal and practical implications, a recommended approach to implement the proposed changes.

(i) Dealing with special purpose zones

Apart from the practical issues of addressing changing VPP zones there is the issue of schedules to special purpose zones. These schedules appear not to have been updated as part of VC142.

Ideally the schedules in these zones should be redrafted with the new land use terms. An alternative work around is to specify that the terms used in a specific schedule has the meaning current when the schedule was introduced. This could prevent unintended consequences.

The Committee seeks submissions on the following questions:

67. What practical implementation issues should the Committee consider?
Appendix A  Appointment and Terms of Reference

The Advisory Committee appointment and Terms of Reference

The Minister for Planning appointed Lester Townsend and Katherine Navarro as the Land Use Terms Advisory Committee (the Committee) on 21 December 2017 under section 151 of the Planning and Environment Act 1987.

Terms of Reference

Advisory Committee appointed pursuant to Part 7, section 151 of the Planning and Environment Act 1987 to review and recommend improvements to land use terms and their definitions in Clause 74 of the Victoria Planning Provisions (VPP).

Name

The Advisory Committee is to be known as the Land Use Terms Advisory Committee.

1. The Advisory Committee is to have two members with the following skills:
   - Expert knowledge and experience of the operation of the VPP and planning schemes.
   - Expert knowledge and experience of statutory drafting.
   - Legal expertise about the operation of land use definitions in the planning system.

   The Advisory Committee may seek additional expertise as required.

Purpose

2. The purpose of the Advisory Committee is to review and recommend improvements to land use terms and their definitions in Clause 74 of the VPP.

3. The Advisory Committee is to provide advice and present its findings and recommendations on the following matters:
   - Principles and business rules for including land use terms in Clause 74.
   - Existing land use terms in Clause 74 that should be removed or modified.
   - New land use terms that should be included in Clause 74.
   - Legal and practical implications of any recommended changes to land use terms and their definitions. These include:
     - existing use rights implications
     - consequential changes to the VPP (such as changes to zone land use tables, general terms and nesting diagrams)
     - potential impacts on users of the planning system.

   With regard to the identified legal and practical implications, a recommended approach to implement the proposed changes.

4. The Advisory Committee is not expected to:
   - Review land use terms which are currently under consideration by the Department of Environment, Land, Water and Planning (DELWP) through other projects.
   - Review land use permissions in zones, with the exception of identifying and having regard to the consequential impacts of proposed changes in land use terms on the functioning of zones.
   - Recommend changes that would have major implications for the operation and purposes of the existing zones.
• Review Clause 72 (General Terms), unless there is a consequential change that flows from a change to a land use term.

Background
5. The Government has initiated the Smart Planning program to reform and modernise the Victorian planning system. The aim of the Smart Planning program is to increase the effectiveness and efficiency of the operation of planning schemes. As part of that program, a discussion paper (Reforming the Victoria Planning Provisions: A discussion paper) was released in October 2017 and comment sought on a range of proposals to improve the system. Proposal 5.2 of the discussion paper is to review and update the land use terms section of the VPP.

6. The objectives of Proposal 5.2 are:
   • Increase use of everyday terms that the community understands.
   • Remove or modernise obsolete terms and provide for new or emerging land uses.
   • Distinguish between similar land uses where treated differently in land use tables.
   • Remove unnecessarily specific terms and broaden terms, where appropriate.
   • Provide definitions for undefined terms where appropriate (except for terms that are sufficiently captured by an ordinary dictionary meaning or defined in the Act).

Method
7. The Advisory Committee may inform itself in any way it sees fit, but must consider the following:
8. The objectives of the Smart Planning program generally, with particular regard to the need to simplify the planning scheme.
9. The planning policy principles and objectives, and rational underpinning the VPP's definition system (including the operation of Clause 74) and individual land use terms and their definitions, including:
10. A User's Guide to the new standard terms and definitions for planning schemes in Victoria (September 1996); and
12. The objectives of Proposal 5.2 in Reforming the Victoria Planning Provisions: A discussion paper.
13. All relevant submissions in relation to land use terms received DELWP as part of the consultation for the Smart Planning program.
14. The submissions and other contributions received through the project methodology outlined below.
15. The Advisory Committee is to conduct the review generally according to the following methodology:
16. Preparation of a concise discussion paper that sets out the scope of the review, the role of land use terms in the planning system, proposed principles for drafting land use terms and definitions, a summary of the issues and suggestions received through Smart Planning consultation so far and a description of how to participate in the submission process to be conducted by the Advisory Committee.
17. An on-line submission process designed to allow submitters to identify specific land use terms for deletion, modification or inclusion, to explain the reasons and to also make general comments. This should make it clear that the only changes to the zones that can be considered are consequential changes to land use tables that flow from new, modified or deleted land use terms.
18. Consideration of submissions and other investigation as necessary,
19. Preparation of a final report as set out in paragraph 0.
20. The following parties should be invited to make submissions to the Advisory Committee:
• All councils.
• Organisations represented on the Smart Planning Reform Advisory Group.
• Referral authorities and government agencies which interface with the planning system.

A general invitation for submissions should also be made through the Planning Matters newsletter. DELWP will provide assistance with identifying relevant contact details.

21. The Advisory Committee is to consult with relevant DELWP Planning Group representatives including from Planning Systems, Statutory Planning Services and the Smart Planning program.

22. Public hearings are not required. The Advisory Committee may conduct targeted consultation to explore the issues or other matters, including up to two workshops or forums. The Advisory Committee may meet and may invite others to meet with them.

23. The Advisory Committee may apply to vary these Terms of Reference in any way it sees fit before submitting its report.

Submissions are public documents

24. The Advisory Committee must retain a library of any submissions or other supporting documentation provided directly to it until a decision has been made on its report or five years has passed from the time of its appointment.

25. A copy of all submissions is to be provided to the DELWP's Planning Group.

26. Any submissions or other supporting documentation provided to the Advisory Committee must be available for public inspection until the submission of its report, unless the Advisory Committee specifically directs that the material is to remain ‘in camera’.

Final report

27. The Advisory Committee must produce a written report that includes the following:


29. A summary and assessment of submissions to the Advisory Committee.

30. Any other relevant matters raised in the course of the Advisory Committee’s consultations.

31. Prioritised recommendations which clearly identify:

32. Changes which can be implemented immediately because they are relatively uncomplicated, or policy-neutral.

33. Changes with more significant consequential impacts which can be implemented in the short-medium term.

34. Potential longer-term changes which would benefit from further review or consultation.

35. A list of persons and organisations that made submissions, attended a workshop, met with or otherwise informed the Advisory Committee’s advice, findings and recommendations.

Timing

36. The Advisory Committee must provide a discussion paper for further consultation no later than 20 business days from the date that Planning Panels Victoria is formally notified of the Committee’s appointment.

37. A period of 4 weeks is to be provided for submissions to be made to the Advisory Committee and for the Advisory Committee to conduct other targeted engagement.

38. The Advisory Committee must submit its final report as soon as practicable but no later than 15 business days from the conclusion of the consultation period.

39. The Advisory Committee is to report no later than 13 April 2018.
Fee

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

41. The costs of the Advisory Committee will be met by DELWP’s Smart Planning program.

Richard Wynne MP
Minister for Planning

Date: December 2017

The following information does not form part the Terms of Reference.

Project Management

1. Administrative and operational support to the Committee will be provided by Greta Grivas, Planning Panels Victoria, on 8392 5121 or greta.grivas@delwp.vic.gov.au

2. The departmental contact person will be Tim Westcott, Smart Planning program, on 8392 5541 or tim.westcott@delwp.vic.gov.au.
Appendix B  About land use terms

B.1  Defining land use terms in the Victoria Planning Provisions

Clause 74 and the nesting of terms

Land use terms are defined in Clause 74 of the VPP.23

Land use terms are ‘nested’; that is, a term can be included in another term or include terms within itself. The nesting of land use terms reduces the number of land use terms that need to be listed in a table of uses.

The definitions are set out in a table with four columns:

- the defined term
- the definition, if there is one – some terms are listed without definition
- other listed terms that are included in the definition
- the land use term in which it is included, if any.

You can see from Table 29 that Warehouse includes Store that includes Boat and caravan storage and Freezing and cool storage.

Table 29:  Extract of Clause 74

<table>
<thead>
<tr>
<th>Land use term</th>
<th>Definition</th>
<th>Includes</th>
<th>Included in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warehouse</td>
<td>Land used to store or display goods. It may include the storage and distribution of goods for wholesale and the storage and distribution of goods for online retail. It does not include premises allowing in-person retail or display of goods for retail, or allowing persons to collect goods that have been purchased online.</td>
<td>Commercial display area</td>
<td>Warehouse</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fuel depot</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mail centre</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Milk depot</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Store</td>
<td></td>
</tr>
<tr>
<td>Store</td>
<td>Land used to store goods, machinery, or vehicles.</td>
<td>Boat and caravan storage</td>
<td>Warehouse</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Freezing and cool storage</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rural store</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Shipping container storage</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Vehicle store</td>
<td></td>
</tr>
<tr>
<td>Boat and caravan storage</td>
<td>Land used to store boats, caravans, or vehicle-towed boat trailers.</td>
<td>Store</td>
<td></td>
</tr>
<tr>
<td>Freezing and cool storage</td>
<td></td>
<td>Store</td>
<td></td>
</tr>
</tbody>
</table>

It is worth noting that definitions often specify:

- what activities the term includes, for example: “... It may include the storage and distribution of goods for wholesale ...”

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23 The VPP is a comprehensive set of planning provisions for Victoria that are used, as required, to construct planning schemes. Clause 74 appears in all planning schemes without variation from the VPP.
• what activities it excludes, for example: “... It does not include premises allowing in-person retail ...”.

Plain English

Not all terms listed are defined, for example Freezing and cool storage. The VPP are drafted according to plain English principles and words have their ordinary meanings unless specifically defined. Clause 74 states:

_A term listed in the first column, under the heading ‘Land Use Term’, which does not have a meaning set out beside that term in the second column, under the heading ‘Definition’, has its ordinary meaning._

Inclusive terms

Clause 74 anticipates that not all land use terms will be listed:

74 **Land use terms**

The following table lists terms which may be used in this planning scheme in relation to the use of land. This list is not exhaustive. However, a term describing a use or activity in relation to land which is not listed in the table must not be characterised as a separate use of land if the term is obviously or commonly included within one or more of the terms listed in the table.

A term listed in the first column:
- includes any term listed in the third column and any term included within that term
- may also include other terms which are not listed in the first column.
- but does not include any other term that is listed in the first column – this is sometimes made explicit in a definition.

All terms listed in the third column are also listed in the first column.

Head terms

There are 15 ‘head terms’ in Clause 74 that the majority of uses fall under. These terms are more or less self-explanatory. The exception is Agriculture that includes animal boarding uses that could be for domestic pets and take place in urban environments.

**List 2: Head land use terms**

<table>
<thead>
<tr>
<th>Accommodation</th>
<th>Education centre</th>
<th>Place of assembly</th>
<th>Retail premises</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>Industry</td>
<td>Recreational boat facility</td>
<td>Transport terminal</td>
</tr>
<tr>
<td>Child care centre</td>
<td>Leisure and recreation</td>
<td>Renewable energy facility</td>
<td>Utility installation</td>
</tr>
<tr>
<td>Earth and energy resources industry</td>
<td>Office</td>
<td></td>
<td>Warehouse</td>
</tr>
</tbody>
</table>

Unnested terms

There are 20 unnested terms that do not fall under a head term

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24 The Committee notes an error in Clause 74: Wind energy facility is nested under Renewable energy facility but its listing in Clause 74 does not reflect this.
List 3: Unnested land use terms
- Art and craft centre
- Brothel
- Car park
- Cemetery
- Cinema based entertainment facility
- Crematorium
- Display home
- Emergency services facility
- Freeway service centre
- Funeral parlour
- Helicopter landing site
- Home based business
- Hospital
- Natural systems
- Research centre
- Saleyard
- Service station
- Tramway
- Veterinary centre
- Winery.

B.2 The role of land use terms

Land use terms play a critical role in the planning system in (at least) six places:
- Determining whether a permit is required in a zone
- Informing affected parties of the nature of advertised uses
- Drafting zone controls, either standard or special purpose zones
- Clause 52.06 dealing with car parking
- Clause 52.10 dealing with uses with adverse amenity potential
- Specifying exempt land uses in Clause 62.01.

Land use definitions do not have a role in determining existing use rights.

Determining whether a permit is required

Each zone in the VPP contains a table of uses:
- A use in Section 1 does not require a permit, but any condition opposite the use must be met.
- A use in Section 2 requires a permit. Any condition opposite the use must be met. If the condition is not met, the use is prohibited.
- A use in Section 3 is prohibited.

Deciding under which land use term a proposal fits can be critical to determining whether a permit is required or whether the use is prohibited.

Legal cases have drawn a distinction between:
- the ‘purpose of use’ and
- ‘use’ in the sense of activities, processes or transactions.

It is accepted than the activities on a site may have more than one purpose, and it is the purpose that determines how the definitions should be applied.27

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25 These Clause 37 zones can have a specifically tailored table of uses.
26 If the condition is not met, the use is in Section 2 and requires a permit unless the use is specifically included in Section 3 as a use that does not meet the Section 1 condition.
27 Cascone v City of Whittlesea (1993) 11 AATR 175, 190
In *Cascone v City of Whittlesea*, Ashley J canvassed the leading authorities and summarised the following principles in characterising a proposed use:

- It is always necessary to ascertain the purpose of the proposed use.
- It is wrong to determine the relevant purpose simply by identifying activities, processes or transactions and then fitting them to some one or more uses as defined in a scheme.
- It is wrong to approach the ascertainment of purpose of proposed use on the footing that it must fit within one (or more) of the uses defined in a scheme.
- If the purpose of a proposed use very largely falls within a defined use and the extent to which it does not is so trifling that it can be ignored, then the purpose as revealed should be taken to fall within the defined use.
- More than one separate and distinct purpose can be revealed. If one is dominant, and the lesser purpose or purposes are ancillary to the dominant purpose, then, in planning terms, there is one purpose. But if one use is not dominant, each revealed purpose must be considered. The mere fact that one purpose is authorised will not prevent other revealed purposes from being prohibited.

VCAT has also noted:

> ... it is necessary to have regard to the structure, context and purpose of the planning scheme provisions at the time of interpreting the land use terms.

### Giving notice and writing permits

Many planning permits are advertised. It helps people understand what has been applied for if an everyday term can be used. Some Councils advertise with an everyday term and include the defined land use term in brackets, for example ‘Brewery (Industry or Manufacturing sales)’.

Advertising the everyday term with the defined term in brackets makes it accessible to the public and assists planners and lawyers to identify the defined land use term it falls under.

### Drafting zones

A number of zones allow tables of uses to be drafted specific to a site or locality. These are listed at Clause 37 of the VPP and include the Special Use Zone, Comprehensive Development Zone, Capital City Zone, Docklands Zone, Priority Development Zone, Urban Growth Zone (where a precinct structure plan is in place), and Activity Centre Zone.

Land use terms are obviously used in the exercise of drafting these zones.

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28 Cascone v City of Whittlesea (1993) 11 AATR 175.
31 The special purpose zones Urban Floodway Zone, Urban Growth Zone (where no precinct structure plan applies) and Port Zone have defined table of uses.
Clause 52.06 Car parking

Clause 52.06 lists parking requirements for a range of uses, most of which are listed in Clause 74. A land use term that applies to a use generally affects the number of car parking spaces that must be supplied.

Clause 52.10 Uses with adverse amenity potential

Clause 52.10 lists ‘threshold distances’ for a range of uses, most of which do not really align with terms listed in Clause 74. Clause 52.10 explains:

The threshold distance referred to in the table to this clause is the minimum distance from any part of the land of the proposed use or buildings and works to land (not a road) in a residential zone, Capital City Zone or Docklands Zone, land used for a Hospital or an Education centre or land in a Public Acquisition Overlay to be acquired for a Hospital or an Education centre.

The Commercial 1 Zone says:

Section 2 – Permit required

<table>
<thead>
<tr>
<th>Use</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>Must not be a purpose listed in the table to Clause 52.10.</td>
</tr>
<tr>
<td>Warehouse</td>
<td>Must not be a purpose listed in the table to Clause 52.10.</td>
</tr>
</tbody>
</table>

This has the effect of prohibiting, among others, the following uses:

- Certain listed food or beverage production, including:
  - Bakery (other than one ancillary to a shop)
  - Manufacture of milk products
  - Milk depot
  - Poultry processing works
  - Smallgoods production.
- Food or beverage production other than those listed within this group.

This essentially prohibits craft breweries, coffee roasters, distilleries, cheeseries, small artisanal smallgoods and the like to manufacture in the Commercial 1 Zone.

Clause 62.01 Uses not requiring a permit

Clause 62.01 exempts certain uses from a permit. It uses land use terms from Clause 74, but also the unlisted term Road.

Existing use rights

Planning Schemes control the change in use or the development of land. It is a generally accepted principle that a person can continue to use the land in a manner that was previously lawful but has become unlawful as a result of an amendment to the relevant Planning Scheme. This ‘right’ to continue existing practices is called ‘existing use rights’.

Certain criteria need to be met in order for a person to be able to claim existing use rights. Under Clause 63 of the VPP if a person can demonstrate the ongoing use of land for a period of 15 years that person can claim existing use rights and can continue what may otherwise be a prohibited use under the new planning controls. These existing use rights are not
extinguished by the issue of a planning permit. There may be occasions where changing the use of the land may result in ‘losing’ those existing use rights and triggering a need for a planning permit.

Two important principles underpin existing use rights:

- The definitions in the planning scheme are not used to determine what the existing use is.\textsuperscript{32}
- Changes in the intensity of a use is usually not a change in the use.

\textsuperscript{32} See Clauses 63.02 Characterisation of use 63.03 Effect of definitions on existing use rights.