

# VICTORIAN PLANNING PROVISIONS REFORMS

**SMART PLANNING REFORMS: REFORMING THE VICTORIAN PLANNING PROVISIONS**

**CITY OF MELBOURNE MANAGEMENT SUBMISSION  
DECEMBER 2017**

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## 1 Executive Summary

This submission on the Victorian Planning Provisions (VPP) reforms has been prepared by the Management of the City of Melbourne. It has not been considered or endorsed by Council.

City of Melbourne management (CoM) commends the Department of Environment, Land, Water and Planning (DELWP) for progressing the SMART Planning Initiative which aims to deliver long term transformative change to the planning system. CoM supports reforms to the planning system in Victoria which:

- provide greater clarity and certainty to the community, development and planning industry and public authorities regarding planning and development;
- deliver well-designed, high quality and sustainable development which contributes to context and place; and
- deliver transparent, timely and accountable processes for development applications, and planning scheme amendments.

CoM welcomes efforts and initiatives to improve the efficiency and effectiveness of the VPP and planning schemes. We agree that change is needed to the VPPs, as cumbersome Planning Schemes and protracted processes for planning scheme amendments do not respond to the context of significant growth or the pace of urban development that is being experienced in Victoria, particularly in the inner metropolitan area of Melbourne.

The planning context of the inner municipalities of Melbourne is different from the issues that are evident in the rest of the State. Approximately 45% of economic activity occurs within these inner metropolitan municipalities, so that these municipalities have different needs and pressures. The reforms should acknowledge this context and the continued one-size-fits-all approach to planning controls across the whole of Victoria should be reconsidered. An example of where blanket State-wide provision has raised considerable issues is the introduction of 11 metre mandatory height controls for the General Residential Zone. These changes to the residential zones with accompanying height limits were introduced without any regard to local Council strategies or the varying contexts across Victoria. What is appropriate on the fringes of metropolitan Melbourne differs from what is appropriate in the Capital Central City context.

While it is agreed that planning schemes have become long and complicated, the Smart Planning process presents a significant opportunity to include additional reforms that ensure that the focus of planning schemes is on facilitating high quality development that complements and enhances local context.

The proposal for a simplified Municipal Strategic Statement (MSS) with an integrated planning policy framework (PPF) grouping all three levels of policy (State, Regional and Local) under themes needs further careful consideration. The proposed system provides potential for the PPF to be complicated and lengthy, particularly if the framework set out in the Planning Policy Framework to which Local Planning Policy must interlock is too tightly structured. Where an applicant or stakeholder wants to know about their local area, the proposed structure has the potential of making the Scheme very difficult to follow and understand. Any changes should provide clarity and ease of access to relevant information. CoM is concerned that the integrated PPF will undermine planning for place and potentially result in the loss of local content and place specific outcomes.

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In addition, the MSS plays a critical role in defining the future vision of a municipality and places within it, in a way that is easily understood by applicants and stakeholders. The Melbourne MSS has provisions relating to local systems such as the Moonee Ponds Creek, and Maribyrnong and Yarra Rivers. It also identifies local areas and includes specific provisions for each local area. This allows the Council to plan for the type of place, such as a river, or for a specific place such as Carlton. If a thematic system is pursued, there is concern that either content will be lost and/ or duplication could occur. In planning, the specific characteristics of place and context are relevant and important considerations.

Councils use their relevant strategic, statutory and specialist skills in framing up amendments, and consulting with the local community. Moving to a centralised unit within DELWP to prepare all amendments on behalf of Councils may be beneficial, but it should be at the discretion of Councils and responsive to their context. While consistency in drafting controls is important, Councils understand their local place and are best placed to draft planning scheme amendments in response to particular contextual drivers and requirements. We do not support mandatory use of the proposed DELWP service. We also raise the importance of resourcing such a service adequately as it is essential that using the service does not further delay an already lengthy amendment process. There is a particular need for Councils and DELWP to have a shared understanding of the Amendment pipeline, highlighting issues early so that they can be addressed prior to exhibition. While not part of this reform paper, there is need for more speed and certainty in Amendment processes to ensure land use regulation is able to respond to market developments, and what has been agreed with the community through structure planning or strategic work is translated into policy and/ or controls in a timely manner.

VicSmart and code-assess are permit streams that aim to provide an easier, faster process for simpler applications. The code-assess approach of providing a quick and easy assessment for simple applications will save time and resources by providing a guaranteed issuing of permit if compliant with standards. However this adds an extra permit stream. The opportunity to increase permit exemptions when conditions are met, rather than introducing an additional permit stream which would further complicate the planning permit application process, should be further explored.

While the proposed reforms listed in the particular provisions section of the Paper are extensive, there are two matters that require more attention. Firstly, there is a need for greater planning scheme determination of environmentally sustainable outcomes (ESD) and the ability to enforce these commitments over time. There is also a need to facilitate and require high quality design to ensure that buildings contribute to their place. Both of the above are universal factors in driving and sustaining liveability across any urban area and should be addressed in the reforms.

CoM notes that consultation on these reforms is restricted to feedback on this discussion paper, then a loop back to technical and advisory groups, prior to finalisation of the reforms and gazettal. On the basis that the reforms are in some cases not specific, but rather define a scope for investigation, City of Melbourne advocate for a further opportunity to provide detailed comment once there is clarity about what is being proposed. Our support for particular reforms can only be 'in principle', as the devil will be in the detail. It is imperative to test the unintended consequences of any proposed reforms. The costs and resource implications of implementing the proposed reforms to Councils will be significant and this needs to be fully understood and transparent.

It is imperative that once the new suite of Planning Scheme Provisions and tools are drafted that there is a comprehensive public process to enable testing of the reforms to ensure intended outcomes are achieved and detailed matters considered appropriately.

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## 2 Introduction

### 2.1 Reasons for change

CoM welcomes the overall Smart Planning program and this opportunity to comment on the review of the VPPs, which incorporates a wide range of proposed reforms and improvements.

The scope of the Discussion Paper is limited to proposed reforms to the current structure and operations of the VPP. Given that the Paper and the proposed reforms are options and ideas with no actual planning scheme controls, the City of Melbourne strongly requests that it be afforded an opportunity to comment on the detailed proposals and controls when they are developed.

It is considered that reforms that focus on ensuring environmentally sustainable development, on good planning outcomes and quality contextualised development should be included in the Smart Planning program.

Working with a system where the same rules apply unilaterally across the State is problematic for the inner City Councils. This has been particularly evident in the recently introduced new residential zones that specify the same mandatory building heights for the whole of Victoria. A further example is the Mixed Use Zone, which continues to have a focus on higher density housing rather than an appropriate mix of uses. Planning scheme provisions that respond to a Capital City and inner city context are a necessity.

The present system has generally enabled the City of Melbourne to achieve good contextual and place specific outcomes. One concern with the review of the VPPs is that in the drive for efficiency, the essential flexibility of the system will be diminished, leaving planning authorities with insufficient ability to respond to their particular circumstances. This concern underpins many of the responses to the changes proposed to the particular provisions.

### 2.2 The new principles: Digital First and Proportional

The first of the two new principles, 'Digital First', is supported as it should lead to substantial reductions in time and an increase in the accessibility of the system to the everyday user. CoM support reforms which are compatible with digital tools and processes. Hyperlinks to all incorporated documents should provide the public and Councils direct access to a complete set of transparent planning rules for Victoria.

The second principle, 'Proportional', is supported in principle, depending on the proposed changes to the VPP. Its implementation will depend on the judgement of planning staff making decisions on matters such as determining what a low risk application is; the giving of notice; requests for further information and the extent of conditions imposed on permits. These matters are not fully resolved and should be the subject of ongoing review as part of the Smart Planning program.

The Victoria Planning Provisions have served Victoria well since their introduction in 1997. However the scale of growth and development of the State has resulted in a system which is not 'fit for purpose'. It is hoped that the concentrated effort currently being made will be backed up by the dedication of ongoing resources to enable Victoria's planning system to stay abreast of changing technologies and community expectation.

The descriptor in 'Policy and Outcome focused' does not reference development outcomes, in terms of their responsiveness to context, sustainability, or contribution to site or neighbourhood. This should be articulated. Alternatively 'Design quality' should be elevated as a key principle of a modern planning system. The Planning

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Scheme is the tool to achieve a high quality environment for all Victorians, particularly on private land, which has a significant impact on the quality of the public realm. It must enable a development approvals process which facilitates high quality, design-led outcomes rather than an adversarial process based on potential development rights.



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## 3 Detailed response to the Discussion Paper

The following numbering system relates to the proposal numbers of the reforms.

### **Proposal 1: A simpler VPP Structure Including VicSmart**

#### *1.1 Restructure and reform the particular provisions*

This proposal is supported. It is agreed that the current Particular Provisions are not properly ordered. Some contain permit triggers and some do not; some may be relevant to one municipality and not to another. There is considerable scope to refine and simplify them.

The Specific Sites and Exclusions clause was initially introduced to accommodate controls for sites. A preferred approach would be to delete this provision and consolidate it with the other VPP tools that allow site specific controls into one Incorporated Document Overlay and to apply a trigger linked to the planning scheme maps to ensure the users of the scheme are aware of their existence.

#### *1.2 Integrate VicSmart into appropriate particular provisions and overlay schedules*

This proposal is supported. The current location of the VicSmart provisions as an isolated addition to planning schemes is inappropriate. Embedding them in the zone, overlay or particular provisions as proposed would simplify assessment pathways.

However, the details of the provisions also require review. It is frequently more difficult to determine whether or not an application for permit qualifies as a VicSmart application than it is to determine the application. The fundamental characteristic of VicSmart applications being exempt from the giving of notice and review must be retained.

The timeliness of the VicSmart system should also be reviewed. The 10-day time line is rarely met and recourse to VCAT appears to be an inadequate remedy for applicants.

#### *1.3 Consolidation of administrative provisions*

This proposal is supported as part of routine streamlining of the VPP subject to review of the detail of what is proposed.

### **Proposal 2: An integrated Planning Policy Framework**

#### *2.1 Integrated State, Regional and Local Policy*

This proposal requires further consideration and evidence to demonstrate that its intention to provide clarity and logical sequencing of information will actually occur. Local policy is used extensively by responsible authorities in decision-making and is a vital part of a planning scheme. It should be retained and the planning authority (usually the Council) should have the freedom to tailor policies to match the particular circumstances, context and place, while remaining within the bounds set by State policy.

#### *2.2 Simplify the Municipal Strategic Statement*

While CoM understands the drivers for this proposal, we fundamentally challenge that simplifying the MSS will result in better development and planning outcomes. While the MSS should be reviewed every four years, and should not repeat State policy, it is not necessarily improved by being reduced in content. It is an essential

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document in formulating place based strategy and decision-making. The MSS is critical in defining and planning for place and does not have an impact on administrative efficiency.

A simplified MSS with an integrated planning policy framework grouping all three levels of policy (State, Regional and Local) under themes, may undermine the City of Melbourne's place-based approach to planning and could result in the loss of local content. More detail and testing is required to prove that this is the best course of action.

## *2.3 Expand policy themes*

As discussed in 3.4, the City of Melbourne does not support the integration of State, regional and local policy into a single Planning Policy Framework. The benefit of shifting to a more theme-based structure is unclear and will undermine planning for place.

## *2.4 Create a clearer and simpler structure for policy making*

This proposal is supported subject to Council reviewing the detail of what is proposed and providing that there is flexibility to accommodate place based planning strategies.

## *2.5 Set new rules and guidelines for writing policy*

This proposal is supported with respect to creating clearer and simpler rules for policy making, although the City of Melbourne does not yet support following the PPF structure detailed in Proposal 2.1 which is to integrate State/regional and local policy.

At the authorisation stage of an amendment, if a proposed amendment complies with relevant rules and guidelines, it should be approved for public exhibition. Any DELWP concerns that fall outside the guidelines should be submitted directly to Planning Panels Victoria for consideration. This would save considerable time.

## **Proposal 3: Assessment pathways for simple proposals**

### *3.1 Embed a VicSmart assessment pathway in appropriate particular provisions*

This is supported. In addition, embedding an assessment pathway in a zone or overlay may also prove effective and should be explored with councils.

### *3.2 Introduce new code-based assessment provisions for simple proposals, to support small business, industry and homeowners.*

This is supported subject to the detail of what is proposed.

Further research should be undertaken to identify the volumes of VicSmart applications of various types which are being processed to highlight the areas of greatest workload which warrant early attention. This could extend the list of code assess categories quoted in the discussion paper. As suggested, some categories could be elevated to no permit required status especially if it is found that applications are never refused.

## **Proposal 4: Smarter planning scheme drafting**

### *4.1 Create a new VPP user manual*

This reform is supported.

### *4.2 Establish a business unit dedicated to VPP and planning scheme amendment drafting*

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While CoM recognises that it may be beneficial to some Councils and in some circumstances, to have a dedicated DELWP business unit drafting controls, such a service should be available to be used at a Council's discretion. If it were mandatory for all proposed amendments across the State to be directed through such a unit, there is a risk of protracted delay. The resource requirements for such an entity would be extensive. There needs to be clarity about how amendments would be prioritised by a centralised business unit.

DELWP's resources could be directed to proactively engaging with and providing advice to Councils at the inception stage of an amendment when the planning scheme controls are being drafted.

If a planning authority chooses to independently draft an amendment to its planning scheme and the amendment complies with the VPP and relevant business rules, the planning authority should be given authorisation to exhibit the amendment without delay. If there are unresolved DELWP concerns with an amendment, these should be presented to Planning Panels Victoria for consideration and advice.

CoM questions the reference to the Office of Parliamentary Counsel (OPC) as an analogy for the DELWP business unit. The OPC acts as a source of independent professional advice to both Houses of Parliament, whereas a DELWP unit would be a part of the department of State and subject to Ministerial control.

## *4.3 Create an online Victorian planning library*

This reform is supported.

## **Proposal 5: Improve Specific Provisions**

### *5.1 Improvements to Specific Provisions*

Refer to Section 4.

### *5.2 Update the Definitions section of the VPP*

This is strongly supported. Outdated definitions lead to confusion and the triggering of needless applications for permits. For example, there is currently little reference to arts and creative uses which are relevant to contemporary practice.

### *5.3 Regularly review and monitor the VPP*

This is supported.

## 4 Response to possible reforms of specific provisions

This section responds to each of the proposed reforms of specific provisions outlined in Appendix 2. The level of information provided varies considerably in this section, ranging from scoping what needs to be investigated, to being specific about the content of the potential reforms of specific provisions. As stated previously, it is essential that once feedback on the discussion paper is considered and actual provisions are drafted, there is a further opportunity to rigorously evaluate how the reforms will play out in practice to ensure they achieve their intended outcomes.

### 1. Review All Zone Schedules

Agree.

### 2. Review Zones

Agree.

### 3. Review Residential Zones

Agree subject to the following comments.

Expectations for development in the Residential Zones differ widely across Victoria and from one municipality to another. Uniform height controls over the whole State are inappropriate. Planning authorities should have the discretion to vary the height and other restrictions in line with local conditions and expectations, and strategic planning and design work.

There is no planning reason to relate use to height. For example, making child care centres a Section 1 use only in the Residential Growth Zone does not seem logical. There is little difference in amenity impacts of a child care centre across the residential zones.

We fundamentally question that the building code is equipped to address design issues.

### 4. Review the Mixed Use Zone

Agree subject to the following comment.

The Mixed Use Zone is taken to be a defacto residential zone because of its position in the suite of zones, and because residential development is the primary as-of-right use. There is a current developer and market preference for residential projects which is reinforced by resident objections to non-residential uses.

The mixed use zone should be strengthened so that a genuine mix of uses is encouraged, residential use is not the primary use, and specific outcomes can be prioritised in certain areas. The introduction of more Section 1 land uses should be explored as well as Special Use Zones (SUZ). DELWP should support planning authorities in creating schedules which suit local conditions and encourage employment generating or specific uses. This may extend to making non-residential uses a mandatory requirement in some locations.

### 5. Review the Industrial 1 Zone

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Agree. A threshold size could also be introduced for buildings and works, below which no permit would be required.

## **6. Review the Industrial 3 Zone**

Agree.

## **7. Review the Commercial 2 Zone**

Agree subject to the following comment. The refresh of land use terms could provide greater clarity and contemporary definitions of convenience restaurant, food and drink premises, takeaway food and drink premises. A convenience restaurant generally refers to major fast food chains, which have high potential impacts on nearby businesses and traffic through an area. This requires further consideration, as as-of-right may not be appropriate dependent on context.

## **8. Review all Rural Zones**

Not applicable to CoM.

## **9. Review the Farming Zone**

Not applicable to CoM.

## **10. Review the Urban Floodway Zone**

Agree, subject to being provided with a draft provision.

## **11. Review the Urban Growth Zone**

Not applicable to CoM

## **12. Review All Overlays**

Agree. The review should include consideration of consolidating the range of overlays. Any suggestions that blur land use and development controls are not supported. These require detailed testing as they are not as simple as outlined.

## **13. Review all Environmental and Landscape Overlays**

Agree, except 13b. This proposal suggests that a large footprint dwelling would be exempt from permit requirements for vegetation removal on private land. Environmental and landscape impacts of vegetation removal associated with large single dwellings or multi-unit development of a similar scale are the same.

## **14. Review the Heritage Overlay**

In principle support for new permit exemptions for minor works which cannot affect the heritage value of the place, for example, in the case of a contributory building, where not visible from the public realm. In the City of Melbourne, buildings such as small verandas and pergolas could have a major impact on the heritage significance of a building and should not be considered as minor works.

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## 15. Review the Development Plan Overlay

Agree.

## 16. Review the Neighbourhood Character Overlay

Agree.

## 17. Review all Land Management Overlays

Agree.

## 18. Review the Erosion Management Overlay

No comment.

## 19. Review the Salinity Management Overlay

No comment.

## 20. Review the Floodway Overlay

In principle agreement, subject to agreement by Melbourne Water, and further detail to understand implications.

## 21. Review the Land Subject to Inundation Overlay

In principle agreement, subject to agreement by Melbourne Water, and further detail to understand implications. Flooding needs to be addressed strategically across urban renewal areas, rather than at a site-by-site scale, as the cumulative impacts of raised floor levels are detrimental to the delivery of great streets and neighbourhoods.

## 22. Review the Special Building Overlay

In principle agreement, subject to agreement by Melbourne Water, and further detail to understand implications. Flooding needs to be addressed strategically across urban renewal areas, rather than at a site-by-site scale, as the cumulative impacts of raised floor levels, are detrimental to the delivery of great streets and neighbourhoods.

## 23. Review the Airport Environs Overlay

The flight paths of incoming aircraft over the Capital City Zone limit the heights of buildings, but there is no indication of this in the planning scheme. A more reliable system is required.

## 24. Review the City Link Project Overlay

Agree.

## 25. Review Specific Sites and Exclusions

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Agree.

## **26. Review Car Parking**

Agree. Councils should be consulted on this and a blanket approach across Victoria is not supported. The Central City has entirely different needs to an outer suburban shopping strip or activity centre.

## **27. Review Earth and Energy Resources Industry**

No comment.

## **28. Review Uses with Adverse Amenity Potential**

Agree subject to the following comment. The Environment Protection Authority (EPA) is the determining referral authority. It should be a mandatory requirement that the applicant for permit resolve conditions with the EPA prior to lodgement of the application with the responsible authority.

## **29. Review Service Stations**

Agree.

## **30. Review Car Wash**

Agree.

## **31. Review Motor Vehicle, Boat or Caravan Sales**

Agree.

## **32. Review Telecommunications Facility**

Agree.

## **33. Review Licensed Premises**

Agree.

## **34. Review Gaming**

CoM do not support the removal of gaming from the planning scheme. The planning system makes a distinct and valuable contribution to the evaluation of the use and installation of electronic gaming machines (EGM). It is essential that the City of Melbourne retains the ability to determine applications for the use/installation of EGMs as Council and VCGLR have different considerations.

## **35. Review Land Adjacent to a Road Zone Category 1 or a Public Acquisition Overlay for a Category 1 Road**

Agree.

## **36. Review Bicycle Facilities**

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Agree subject to the following comment. Bicycle ownership and use within the City of Melbourne is substantially higher than the metropolitan average. The rate in the Table should be capable of variation to suit different municipalities, possibly through a Schedule. CoM would like to be involved in any review.

## **37. Review Post Boxes and Dry Stone Walls**

Agree.

## **38. Review Clause 54, 55, 56 and 58**

Agree.

## **39. Review Metropolitan Green Wedge Land**

Not applicable to CoM

## **40. Review General Provisions**

Agree.

## **41. Review Decision Guidelines**

Not able to comment due to the lack of information.

## **42. Review Referral and Notice Provisions**

Agree

## **43. Review General Terms**

Agree.

## **44. Review Land Use Terms**

Agree subject to there being a regular review, possibly coinciding with the four-year review of planning schemes. This requires extensive consultation with Councils to avoid future undesirable planning outcomes.

## **45. Review Land Use Terms (commercial Battery Storage)**

Agree.

## **46. Review Nesting Diagrams**

Agree.

## **47. Review Incorporated Documents**

Agree. Incorporated documents should be publicly and easily accessible, through digital tools and a consolidated library.

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## **48. Review Planning Practice Notes**

Agree subject to the potential benefits of linking Planning Practice Note 59 with VicSmart provisions being explored.

## **49. Review Technology and the Availability of Documents**

Agree.

## **50. Review Section 173 Agreements**

Agree.

## **OTHER MATTERS**

Clauses 52.05 (Advertising signs), 52.07 (Loading and Unloading of Vehicles), 62 (Uses, etc. Not Requiring a Permit) and 63 (Existing Uses) also require revision. Clause 52.05 is of particular significance for the City of Melbourne because of the large number of applications and the consequent demand for resources.