



5 November 2017

Planning Systems Team
Department of Environment, Land, Water and Planning

Email: planning.systems@delwp.vic.gov.au

Dear Sir/Madam

1 Merrijig Drive
Torquay, Victoria

POST
PO Box 350, Torquay
Victoria 3228

PHONE
03 5261 0600

FAX
03 5261 0525

WEB
www.surfcoast.vic.gov.au

EMAIL
info@surfcoast.vic.gov.au

Reforming the Victoria Planning Provisions

I refer to the proposed reforms to the Victoria Planning Provisions outlined in the October 2017 discussion paper and the Victorian Government's invitation for feedback.

Surf Coast Shire Council supports the reform concept in principle; however Council holds concern about a number of the changes and offers comments on others as set out below.

Proposal 1: A Simpler VPP structure with VicSmart assessment built in

1.1 Restructure and reform the particular provisions

Council expresses caution about the proposal for *specific use and development provisions* operating as a 'one stop shop' for certain proposals. This might lead to repetition of information throughout the scheme and inconsistencies as provisions are amended over time. Further there is risk of missing or undermining local provisions and objectives.

The idea of a 'one stop shop' is desirable, however Council would encourage the use of technology to achieve this outcome rather than adding to the size and complexity of the planning scheme. For example an interactive planning scheme which can isolate the applicable provisions based on location and details of the proposed use and development.

Proportional assessment process

The paper posits as a benefit that *"the regulatory impacts imposed by planning rules are more proportional and aim to be the minimum to adequately address the planning risks."* Whilst regulatory compliance inevitably involves some burden, this underplays the positive role that planning has in influencing the development of communities and protecting and enhancing the environment.

1.2 Integrate VicSmart into appropriate provisions and overlay provisions

Within a system that incorporates the VicSmart process, the integration of VicSmart into the appropriate provisions is supported. The structure of VicSmart as Clause 90 at the end of the scheme separated from the enacting provisions requires complicated navigation back and forth through the scheme and is easily overlooked by those unfamiliar with the scheme.

Council has experienced issues with having two separate application streams when proponents have proceeded, including making commercial investment decisions, on the basis of falling into the VicSmart application process but having failed to identify a non-VicSmart permit trigger. Having to switch from the VicSmart stream to the normal process has upfront impacts (having to pay more fees and possibly provide more documents), but more substantially being subject to notice requirements and review rights can significantly extend the application processing time. This can have associated costs and impact on the viability of a proposed commercial venture.

Whilst some of these impacts might be avoided by better integration of VicSmart improving the clarity of the scheme, thereby making it easier to determine the process which will apply, it is submitted that there should be a single point of entry into the planning system. Once in the system all applications can then flow into the correct stream without having to step backwards in the process.

Proposal 2: An integrated planning policy framework

2.1 Integrate state, regional and local planning policy

The proposed integration of policy at all levels is supported and is likely to provide a clear and concise policy context in the 'on the ground' application for any particular theme. However, a risk is the loss of a consolidated framework for distinct locations. The Surf Coast Shire is characterised by a number of coastal and rural townships with a large rural hinterland. The urban character, range of uses and services and growth potential of these townships varies considerably as do the different areas within the hinterland. This is likely to be common across municipalities, particularly non-metropolitan.

The LPPF of the Surf Coast Planning Scheme includes a location based strategy for each town within which policy objectives for relevant themes are set out in a "place-based" approach. The proposed theme based organisation of the PPF might disperse key objectives for a location or make the appropriate weighting of policy less clear. In 2014 Council made a submission to the State Planning Policy Framework Review Advisory Committee Draft Planning Policy Framework outlining the importance of keeping this facility in the planning scheme. It is noted that the proposed Table of Contents for the new format schemes includes a Clause 11.03-5 "Local Places". More information is required to determine whether this section could address Council's requirements.

It is acknowledged that Proposals 2.2, 2.3 and 2.4 might alleviate this issue if appropriately implemented. Digital technology could also assist navigation of the PPF by automatically cataloguing applicable policy based on the user's requirements.

Further it is submitted that local content should be able to direct the appropriate weighting of policy, where conflicting objectives might arise, to strengthen decision making and enhance consistency.

2.4 Create a clearer and simpler structure for policy making

It is proposed that local policy may include policy application and context, but regional policy must not include these. It is submitted that there might be benefit in policy application and context content being available for regional policy. Regions are typically diverse and planning objectives are unlikely to be uniformly applicable across the region. Guidance on the application and context of policy, where appropriate, is likely to assist decision making.

Transitioning

Transitioning to a new PPF (and VPP) will represent a significant body of work for each municipality requiring allocation of resources and accommodating this within existing work programs. It may also result in suspension of other scheme amendments to ensure consistency with the new format and avoid duplication or repetition of work.

There is also likely to be a significant impact on the operations of councils as a responsible authority in having to reassess existing applications based on the new format and updating of templates and systems.

It is strongly advocated that the State must support councils in this transition with resources and assistance. For some councils this might include employing additional staff or engaging consultants, however this may trigger a spike in demand within the profession. From finalisation of the new format to implementation, sufficient time must be allocated for councils to prepare local scheme content and to be prepared in respect of statutory planning responsibilities.

Proposal 3: Assessment pathways for simple proposals

3.1 Embed a VicSmart assessment pathway in appropriate particular provisions and overlay schedules

Council supports identification of VicSmart applications within the provisions which trigger a permit for the proposed use or development so that a user of the scheme can readily identify the process which will apply to the application without need to refer to a separate section of the scheme.

The principle of “proportionality” in decision making is supported and is an element of the existing system (seen in the potential in some provisions to exempt an application from notice and review provisions; the decision of Council to give or not give notice under s.52; and the principle that only matters relevant to the permit trigger are to be considered). It is likely that some of the perceived complexity of the planning system arises from a lack of understanding, including within the profession, and therefore some additional proportionality might be achieved through better and clearer guidance.

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

A range of matters have been proposed as being suitable for code-based assessment; Council offers the following comments:

In principle, if the Code Assess model is considered to be appropriate, then the Code Assess Model should be implemented in full, and remove the need to obtain a planning permit. This would create significant efficiencies in the planning system.

Small café/restaurant or temporary retail or cultural activity standards

In the absence of better particulars it is unclear why these types of use should require a planning permit in an existing commercial centre. It is submitted that the potential permit triggers for reducing car parking and liquor sale and consumption are appropriately addressed through a review of Clause 52.06 (refer to comments below) and Clause 52.27. Low scale advertising signs should already be exempt under Clause 52.05.

Home occupation plus or live/work unit standards

A review of Clause 52.11 is supported, however further detail is required. It is submitted that there could be scope to having variation in requirements based on zoning .

Secondary dwelling (granny flat) standards

It is submitted that an exemption or code assessment for secondary dwellings shouldn't apply to overlays unless written into the overlay schedule, particularly for overlays that deal with environmental risk (such as the bushfire management overlay).

Small lot standards

Council advocates that a single dwelling on a lot in a residential zone shouldn't require a planning permit (under the zone) and can be appropriately managed by the building code (potentially with modified standards for small lots). As previously submitted, lot size is an arbitrary permit trigger for residential development in a residential zone.

Proposal 4: Smarter planning scheme drafting

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

It is unclear from this proposal whether the business unit would support planning authorities in the drafting of provisions or act as a centralised authority for the preparation of planning provisions. Council favours a body of experts which can assist councils with local amendments (which might extend to full drafting based on instructions for those councils which choose this approach) but strongly opposes mandatory centralisation of this function. Council considers it critical that the authority and responsibility of this unit is clarified before it proceeds.

The preparation of scheme provisions often represents the culmination of a significant body of strategic planning (including research, investigation and community consultation) which cannot be easily conveyed through a set of instructions. Important strategic outcomes may be unintentionally lost or downplayed without full understanding of this background and the sensitivity of the subject matter. Further, the drafting might exhibit a metropolitan bias that doesn't suit a rural context.

Whilst a centralised approach might be successful for map preparation, maps are usually more tangible than the preparation of written ordinance.

A centralised drafting unit if not properly resourced could become a bottleneck within the amendment process. Such a 'centre of excellence' will only be as good as the people within it which are likely to change over time with the movement of people and the allocation of resources. For this reason it is submitted that robust business rules and guidance are more important and appropriate than attempting to centralise an element of the amendment process.

Further, removing the drafting role from councils and other bodies would reduce the opportunity for planners to develop and practice these skills and might lead to a decline in skills and experience across the profession.

Improving planning scheme provisions

For Surf Coast one of the impediments to a concise and easily navigated planning scheme is the absence of tools within the VPP which are fit for purpose, resulting in a layering of controls to achieve the desired outcome. For example the coastal towns of the Great Ocean Road are characterised by the scenic landscape within which sit discrete low scale buildings; to protect and enhance the character of these towns the scheme applies Neighbourhood Character Overlay, Design and Development Overlay and Significant Landscape Overlay or Environmental Significance Overlay, as none of these individually provide the right controls (additionally environmental risk overlays such as the Bushfire Management Overlay also apply). This increases the size and complexity of the scheme, can lead to duplication and can make it more difficult to exempt minor development (for example the NCO does not allow exemptions to be scheduled).

Revised VPP overlays could allow for more concise planning schemes by providing overlays which are more flexible in the scheduling of permit requirements and exemptions. In the above example of the coastal towns this would be an overlay that controlled buildings and works (including fences), vegetation protection and subdivision.

Proposal 5: Improve specific provisions

5.1 Improvements to specific provisions

ID. No. 3 – Review residential zones to lower the permit threshold for single dwellings

It is submitted that in the General Residential Zone and Residential Growth Zone that the development of a single dwelling on a lot should be exempt from a permit irrespective of lot size. Lot size is an arbitrary measure to trigger a permit when this type of development is otherwise regulated by the building code.

ID. No. 5 – Make ‘Motor Repairs’ a Section 1 use in the Industrial 1 zone

It is council’s understanding that ‘Motor Repairs’ is currently a Section 1 use subject to the conditions for ‘Industry’. Therefore it is submitted that this change is unnecessary.

ID. No. 5 – Make ‘Convenience Shop’ a Section 1 use in the Industrial 1 zone

Council opposes this change. In rural townships industrial areas are often small in area and proximate to commercial land. Whilst a demand for industrial land may not be immediate (instead subject to slow long term growth) loss to non-industrial use may impact on the orderly growth of the town or prejudice future opportunities. Demand from employees within the industrial area for convenience goods can be easily satisfied by services within the commercial centre. Industrial land may also be an attractive alternative, due to lower land values, which could prejudice the long term viability and vitality of the town centre.

ID. No. 6 – Review the Industrial 3 zone

Council opposes the proposed changes. As noted previously, in rural townships and other smaller urban areas the supply of both industrial and commercial land can be limited and lower land values can provide an economic incentive to utilise industrial land for non-industrial purposes, particularly for businesses that don’t rely on passing trade. The early consumption of industrial land can prejudice further industrial growth (either because land is not available or because land values have been driven up) which in turn can create pressure to develop industries outside town boundaries on rural land or to rezone land.

The decentralisation of commercial uses such as offices and take away food premises can weaken the role of a town centre or activity centre by reducing demand for goods and services from these centres.

It is submitted that Industry and Warehouse should be Section 1 uses (subject to the same conditions as in the Industrial 1 zone) as land uses which are consistent with the purpose of the zone.

ID. No. 8 – Remove the permit requirement for dwelling extensions in the rural zones

It noted that removing the permit requirement for an extension to a dwelling (where Dwelling is a Section 2 use) will not always absolve the need for an ‘approval’ from Council. Where a permit was required to construct the dwelling and that permit includes a condition that the development must not be altered without the consent of the responsible authority, in accordance with the principles enunciated in *Benedetti v Moonee Valley City Council* [2005] VSC 434 and *Box v Moreland City Council (including summary)* (Red Dot) [2014] VCAT 246 (13 March 2014), the ‘secondary consent’ of Council will be required to depart from the endorsed plans of that permit.

If dwelling extensions are to be exempted, it is submitted that the minimum building setback requirements of the zone should continue to apply.

ID. No. 9 – Allowing more primary produce sales in the Farming zone

Council advocates caution before proceeding with this change. The existing Section 1 allowance (50 square metres) already provides for significantly scaled premises to be established as-of-right. It isn’t apparent that genuine primary produce sales require additional floor space, however there are known examples of primary produce sales morphing over time to become shops and other retail premises. Council encourages further research before proceeding.

The Surf Coast Shire is home to a diverse range of animal production enterprises and a large number of businesses which depend upon them. In recognition of this diversity and the value of agribusiness for the region, a number of policies, strategies and actions are in place or in development. These include the Sustainable Agribusiness Strategy (2017-2021) for the G21 Region, the Hinterland Futures Strategy, and the Surf Coast Local Food Strategy. Key to each of these strategies is encouraging, enabling, and developing sustainable agribusinesses to establish and thrive in the G21 region.

However it is equally important to protect the role of rural townships in providing a range of commercial services. Council supports ventures which value add to agriculture at the source but this should not extend to use which competes with urban centres and detracts from the primacy of agriculture. Surf Coast has not experienced noticeable growth in primary produce sales or demand for larger scale premises.

ID. No. 11 – Urban Growth Zone

Council submits that the UGZ should be removed from the VPP and replaced with appropriately detailed settlement planning within the new format PPF and the application of appropriate zones when the land is transitioned to urban use and development.

The UGZ and the requirement for a precinct structure plan has overly complicated planning for urban growth areas. It is an onerous and costly process which has not demonstrated a higher quality outcome. The appropriate use of other VPP tools such as the Development Plan Overlay and new ICP achieves the same outcome without overcomplicating the planning scheme.

ID. No. 12 – Review of overlays – use of land

Council supports appropriate overlays including control over the use of land, particularly risk based overlays such as the Bushfire Management Overlay and Flood Overlay. Surf Coast has experienced a number of proposals for temporary events in high bushfire risk locations. Whilst council has engaged with CFA in assessing these applications, this is on an informal basis and relies on council choosing to seek this input and reduces the standing of CFA in the event of a Tribunal proceeding. Where a use of land might put people or the environment at risk it is submitted that it is appropriate that the use of land be subject to control and overlays may be mapped to identify and be responsive to that risk.

ID. No. 13 – Vegetation exemptions within the environmental and landscape overlays

The centralisation of standard exemptions is supported. Further council encourages that the exemptions be reviewed to strengthen and clarify the provisions. For example:

- Emergency works – clarify the circumstances when vegetation presents an immediate risk
- Fire protection – define a fuel break and clarify the circumstances in which it may be made.

ID. No. 13 – Increasing exemptions within the environmental and landscape overlays

Council submits a cautious approach is required in introducing additional exemptions within the head provision. The qualities and sensitivity of environments and landscapes covered by these overlays are highly variable; a development which is minor in one location might be inappropriate in another. Council encourages the use of exemptions within schedules to the overlays rather than within the head provision. DELWP could work with councils to identify opportunities for additional exemptions; this could include developing and maintaining a list of exemptions applied in other locations and suggestions of other minor developments which might be suitable.

ID. No. 16 – Review the Neighbourhood Character Overlay

Council opposes the removal of the NCO from the VPP unless it is replaced with a suitable alternative overlay or the Neighbourhood Residential Zone is improved, particularly the building height provisions. Council has previously evaluated replacing existing NCO schedules with the NRZ and found that the height controls do not align with the existing provisions and cannot be readily translated.

Existing NCO schedules within the Surf Coast PS specify a building height standard of 7.5m, however this is a non-mandatory standard with variations considered on merit having regard to building scale, prominence in the landscape and public and private views. In our coastal towns topography is varied but commonly steep (in this context a slope of 2.5 degrees is considered flat) and in extreme cases even a single storey building may exceed 7.5m. In this context a mandatory height limit could be unduly restrictive on some sites, but increasing the height limit would depart from the preferred character of low rise buildings.

Council has been advocating to the State Government for several years that the overlays in the VPP need to be rationalised. The Surf Coast Shire and Colac Otway Shire have demonstrated various examples for coastal townships where the number of overlays could be reduced if the head power of particular overlays is increased. The Neighbourhood Character Overlay is a candidate for this, as if expanded, it could remove the need for the Design and Development Overlay and Vegetation Protection Overlay over many properties. Therefore, Council proposes that the NCO is improved rather than removed.

ID. No. 19 – Review the Salinity Management Overlay

Council encourages further review to ascertain whether a permit exemption can apply where the overlay affects urban land and the development is consistent with the purpose of the zone. In Surf Coast there are examples of residential land covered by the SMO where in reality the overlay operates to drive appropriate construction standards to resist the saline conditions. It is submitted that there may be a role for the Building Act to address building for saline conditions thereby avoiding duplication.

ID. No. 26 – Car parking rates

A review of car parking rates and the operation of Clause 52.06 is supported and it is submitted that this review should recognise and consider the difference between locations where there are numerous transport choices and merit in encouraging use of non-car based transport (metropolitan Melbourne and large regional cities) and locations where transport choices are limited and car dominated (regional areas). Further the review should have regard to the demand fluctuations associated with seasonal visitation trends.

ID. No. 26 – Car parking exemption for section 1 uses

Council advocates for broadened use of the approach currently available through the rates in Column B in Table 1 to Clause 52.06, where a 'flat rate' is applied to a wide range of commercial uses, rather than a broad exemption for section 1 uses. There is logic to the principle that in established commercial centres use of individual premises will change over time and there is little value in requiring a planning permit to waive car parking when additional parking cannot be provided. However, in a location where the predominant use of land is undergoing change (say from residential to commercial) car parking is a relevant consideration.

There is also potential for the system to be manipulated in new development by basing car parking on low demand uses (such as Store) to gain a planning permit and then having the use of land change to higher parking demand activities.

ID. No. 29 – Review service station provisions

This review is supported; if the result of the review is to maintain a site area requirement (within clause 52.06 or as a condition of use in a zone), the meaning of 'site area' should be defined. A number of Tribunal decisions have held that the site area is the area occupied by the use rather than lot area. When a site is used for multiple purposes, calculation of site area of one of those uses can become complicated and open to interpretation differences; this is particularly critical when it can be the difference between being a permissible or prohibited use.

It is also submitted that the definition or requirements of a service station should be reviewed to consider the growth in some service station formats of substantial convenience shopping and food and drink components and the potential for these to be incompatible with the zoning (if not part of a service station) and/or in competition with traditional shopping areas. It is submitted that the scale of these elements of the use should be appropriately limited and advocate for a maximum floor area.

ID. No. 40 – Consolidated application requirements

Council supports the principle of a consolidated location for common application requirements for a range of application types and submits that this should be “information required by the planning scheme” for the purposes of Section 47(1)(c) of the Act. Regularly the longest delay in a permit application process is in receiving incomplete applications and having to request further information under Section 54. Whilst council checklists can be useful in guiding applicants they have no weight in deciding whether the application is complete under Section 47.

An interactive planning scheme could assist applicants by identifying only the application requirements relevant to the application.

5.2 Update the Definitions section of the VPP

ID. No. 43 – Review General terms

It is submitted that a broader review of the definitions of Clause 72 is required with common sources of contention or confusion including:

- “Frontage” – where a lot abuts more than one street determining which is the front street when the building faces more than one of the streets
- “Gross floor area” – clarifying how this is to be calculated, particularly roofed areas which aren’t enclosed by walls (roofed decks, alfresco areas, etc), including when an eave/roof projection makes it a “roofed area”
- “Ground level” – what is the “natural level”? Suggest that recent VCAT decisions determining natural ground level be included as a definition in the planning scheme.
- “Secluded private open space” – better defining what are “outdoor living activities” and a “reasonable amount of privacy”
- “Site coverage” – clarifying whether it includes upper level overhangs, eaves and the like.

Further it is submitted that consideration should be given to whether terms remain relevant, such as “radio mast”, “mean building height” and “mean ground level” which don’t seem to have current use in schemes.

ID. No. 44 – Land use terms

Council supports a broad review of land use terms, particularly to reduce ambiguity, but is unable to comment on the proposed use terms in the absence of detail. However Council notes, as an example of the type of confusion which arises, the proposed term “holiday dwelling” would conflict with the current definition of “dwelling” based on the assumption that holiday dwelling is a form of short term accommodation. Care must be taken to ensure that the words used, either defined within the scheme or by ordinary definition, do not result in a conflict, such as with the term “residential hotel”.

5.3 Regularly review and monitor the VPP

A process of regular review is strongly supported and it is submitted that there should be an open online process for planning professionals to lodge with DELWP scheme errors and reform suggestions.

Where VCAT or Planning Panels recommend VPP change, there should be performance targets for the review and implementation of such changes. The issues leading to a recommendation for change are often statutory or interpretative and may have a broad impact, leading to many councils and individuals expending considerable resources on legal opinions and tribunal review. Where an expert body has recommended change this should be acted upon promptly to resolve the issue.

Other comments

Council submits that other significant issues of complexity and confusion about the planning system are:

- the existence of two processes to change an approved use or development – amending the permit using the process set out in the Act or through ‘secondary consent’. It is submitted that there should be a single clear amendment process to provide clarity and certainty to applicants and the community. This process could be proportional to the scale of the amendments sought
- the on-going control over the use or development of land by “use and development must not be altered” type permit conditions. There is certainly need for the integrity of permit decisions to be maintained, however they can become an unnecessary burden catching up further development which doesn’t need a permit. It is submitted that the planning system requires clear guidance on the on-going operation of permits and a mechanism to ‘break’ the obligation to obtain council consent for any alterations where a permit isn’t required and the integrity of the permit decision isn’t affected (for example maintaining privacy screening).

It is appreciated that these two matters are likely to go beyond reforming the VPP however it is considered that they are important to achieving the objectives of the reform program.

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Yours sincerely

[Redacted name]

[Redacted address]