

URBIS RESPONSE TO REFORMING THE VICTORIA PLANNING PROVISIONS

URBIS

[REDACTED]

TABLE OF CONTENTS

Executive Summary	i
Section 1. Response to discussion paper	iv
principles of a modernised vpp	iv
proposal 2: an integrated planning policy framework	iv
Proposal 3: Assessment pathways for simple proposals	v
proposal 4: smarter planning scheme drafting	vi
Proposal 5: Improve Specific Provision	vi
Section 2. holistic reform required	viii

Appendix A Response to specific provisions

EXECUTIVE SUMMARY

Urbis is pleased to provide this submission in response to the **Reforming the Victorian Planning Provisions, A Discussion Paper October 2017**, released by the Victorian State Government.

In preparing our response, we have drawn on our extensive day-to-day experience in facilitating development across Victoria. We work with a broad variety of clients, including Government; the health, aged care and education sectors; with retail, commercial, mixed use, industrial and residential developers; and on large-scale infrastructure projects.

From talking to our clients, we hear the two most important factors are:

1. The need for certainty for the community and industry about the planning process, including the need for clear, consistent and early advice from authorities responsible for specific matters; assessment and processing of planning applications and approval requests in agreed timeframes; and clear expectations at each stage of the planning process; and
2. The need for accountability to meet responsibilities provided under the Act and its regulations, which is symptomatic of a lack of meaningful consequences where timeframes and responsibilities are not delivered on.

Reform should address both of these issues to provide certainty and clear time frames for decision making. We consider positive measures to address these matters will provide a climate for investment in Victoria without compromise to the quality of planning decisions.

WE WELCOME CHANGE.

Urbis congratulates the Government on taking further steps forward the reform of our planning system. In the discussion paper, the Victorian Government recognises the need for reform, resulting from the significant demands placed on the planning system. The planning system is currently dealing with the complex planning matters and actively planning for development in order to accommodate the jobs, transport, services and houses that accompany growth.

In response to the proposal set out in the Discussion Paper, in summary:

Principles of a Modernised VPP

We support the new principles of a modernised VPP, noting our recommendations as:

- To include a new principle of *efficiency*, which we say should underpin the planning system.
- Clarify the principle of *proportional* to minimise the need for planning consents and to streamline process.

Proposal 2: An Integrated Planning Policy Framework

The integration of State and Local Policy, with greater emphasis on local policy is of concern as:

- It may not be policy 'neutral', and the revised drafting should be available for further consultation and comment.
- Is likely to lead to an even greater disparity between planning policy framework between Municipalities.
- May undermine a Metropolitan approach, and dilute the importance of Plan Melbourne in providing for a rapidly growing population.

Urbis recommends a 'top-down' approach, where State policy establishes the Metropolitan approach, and local policy provides the nuance of local context and approach.

Proposal 3: Assessment Pathways for Simpler Proposals

We support for stream-lined pathways for smaller applications, which are more straight-forward.

We support:

- the broadening of this process to include small cafes / restaurants (including liquor licences and signage etc); pop-up retail, which is on the rise; live/work; secondary dwellings (granny flats); and small lot standards.
- A Performance based approach.

We further recommend:

- Permit exemptions for straight-forward activities in appropriate zones.
- Sufficiently resourced Councils to quickly deal with VicSmart proposals, while continuing to improve efficiencies around assessing large and complex applications.
- Removal of the cost-based threshold, where quality of outcome (materials etc) may be penalised. Alternative measures could include floor areas, heights, or distance from sensitive interfaces.
- Review of the barriers to small applications being excluded from the VicSmart process.
- Testing of VicSmart and Codified assessment controls such as the small lot standards. Urbis would be pleased to assist in testing with DELWP.

Proposal 4. Smarter Planning Scheme Drafting

We support a streamlined approach to drafting of the Planning Scheme to improve the clarity and effectiveness, as well as making them more 'user friendly'.

We support:

- A new VPP user manual
- A dedicated business unit focusing on content and drafting of planning scheme amendments, which would improve consistency. Early intervention would also avoid costly and lengthy panel processes involving poorly considered and drafted amendments.
- The creation of an online library or repository of all relevant planning scheme documents, including incorporated and reference documents and approved development plans.

Proposal 5: Improve Specific Provisions

Urbis welcomes the efforts to streamline the planning system, and We have a range of specific comments to make on the suggestions to the Zones, Overlays and Specific Provisions, set out in Appendix A.

In particular we urge Government to retain the existing form of the Urban Growth Zone, where we consider the redrafting would have a number of unintended consequences.

We respectfully request Government consults further on proposed changes:

- Enabling industry input into the drafting of the modified VPPs through the exhibition of proposed zones, overlays and provisions.
- Commitments to periodic review (i.e. 12-18 months after VPPs are gazetted) to address drafting or procedural issues arising from the modifications.

WE CONSIDER THE GOVERNMENT CAN GO FURTHER TO DELIVER LONG TERM, TRANSFORMATIVE CHANGE

As recognised by the Discussion Paper, planning schemes have become increasingly complex and, in our opinion, too unwieldy for the non-planner to understand and navigate.

It is our strong view that any major reform of the Victorian Planning Provisions should be undertaken in concert with a **review of the Planning and Environment Act 1987 (as amended)**, the PE Act, and the Planning and Environment Regulations 2015 as well as an opportunity to integrate other legislation that interacts with the land use consenting system, such as the Subdivision Act 1988, Land Acquisition and Compensation Act 1986; Transport Integration Act 2010.

While reform of the PE Act may not be within the current remit of the VPP reform, we strongly encourage the State Government to reconsider this to give real effect to reforms that would deliver the sort of impacts that planning needs, such as more timely and more efficient decisions and greater accountability.

We consider that it is the 'sum of the parts' that combine to provide the planning framework and which affect its every aspect starting with its legibility through to its objectives and purpose; application, operating efficiency or inefficiency (e.g. decision making), clarity and user friendly nature.

A broader and more holistic review would ensure the best and most integrated outcome for all users of the system can be achieved. Later in this section we refer to other jurisdictions in both Australia and overseas to ask whether they have been considered by the VPP Smart Planning reform group in terms of learning from best practice elsewhere.

While we consider the Victorian planning system is inherently flexible, there is considerable merit to considering and adapting alternative methods for Victoria. To highlight this, we refer to New Zealand's Resource Management Act 1991 (RMA) and some of its components, such as private-led planning scheme amendments as one example that supports some our recommendations herein.

Under the following headings, we set out a number of broader reform recommendations that should be contemplated alongside reform to the VPPs. In summary, these are:

1. Reform to the PE Act to make the planning approval process more efficient, timely and accountable, including amongst other recommendations:
 - a. Deemed approvals within specific timeframes
 - b. Greater accountability for decision making, including stronger award of compensation processes
 - c. Provide for greater efficiency and de-politicalising of planning approvals in line with approved Planning Scheme
 - d. Allow for consideration of important and city-shaping projects through Development Advisory Committees
 - e. Place greater emphasis on decisions against specific Clauses in the planning scheme by removing or limiting the 'catch all' provisions of Section 60 in the PE Act and Clause 65 of the VPPs
2. Removal of 'prohibited uses' from all zones and replacement with a 'Non-Preferred Use' category for which a 'merits based' application and assessment process would apply; OR
3. Ability to apply for any person to initiate a private planning scheme amendment under a clearly legislated pathway with full appeal rights.

SECTION 1. RESPONSE TO DISCUSSION PAPER

This part of our paper responds directly to the matters raised in the Discussion Paper.

PRINCIPLES OF A MODERNISED VPP

Urbis supports the principles of a modern planning scheme, which are described on page 7 of the Discussion Paper, and include *digital first, user focused, consistent, proportional, land use focused and policy and outcome focused*.

We recommend:

- a. Inclusion of a new principle of *efficiency*.

The 2011 Productivity Commission Research Report has highlighted the importance, at a national level, of increasing the effectiveness and efficiency of planning systems in Australia. The review states that different and complex planning systems in Australia *'are difficult for businesses and citizens to navigate. They lack transparency, create uncertainty for users and regulators and impose significant compliance burdens, especially for businesses which operate across state and territory boundaries'* (Productivity Commission; *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments, April 2011, pp. XXVII*).

Current approval processes typically range between 6-12 months through a Council or Ministerial-led approval process, with an additional 6 months should the matter proceed to VCAT. This delay, which can extend to 18 months or longer, provides a significant lag between market and context conditions at lodgement, compared with approval times, and adds considerably to lack of certainty and holding costs for sites. While we whole-heartedly support considered and thoughtful decision-making, we are of the view that the quality of the decisions on current applications is not enhanced through the extended time frames.

- b. Clarify the principle of *proportional* to minimise the need for planning consents.

We agree that provisions should apply an appropriate level of burden. While streamlining minor applications via assessment pathways is one approach, we consider there should be a more holistic review of planning consent requirements. Our submission provides further ideas on how this could be achieved.

PROPOSAL 2: AN INTEGRATED PLANNING POLICY FRAMEWORK

The Discussion Paper proposes to align State and Local Policy into an integrated framework, with *stronger local policy* (p13). While we agree that presentation of the state and local policy together would provide a clearer picture of the policy context, and improve useability of the planning scheme.

However, we are concerned about the proposal for greater emphasis on local policy:

- May undermine a Metropolitan approach, and dilute the importance of Plan Melbourne in providing for a rapidly growing population.
- Already across Melbourne we see the influence of Councils seeking to minimise growth, placing the increased burden of accommodating housing and jobs on areas which often have lower public transport accessibility, fewer jobs, and less social infrastructure. We are concerned that a greater focus on local policy may undermine the importance of Plan Melbourne as a Metropolitan Plan, which should be the guiding document as to how Melbourne grows and changes.
- With greater emphasis on local policy, we say it is likely to lead to greater disparity between planning policy context between Municipalities. Already there are substantially different policies for development within different areas, which create greater burden and an uneven 'playing field'. For example, in relation to ESD, affordable housing, development contributions etc.

Urbis recommends:

- A ‘top-down’ approach, where State policy establishes the Metropolitan approach, and local policy provides the nuance of local context and approach.
- The redraft of integrated policy may not be ‘neutral’, and the revised drafting should be available for further consultation.

PROPOSAL 3: ASSESSMENT PATHWAYS FOR SIMPLE PROPOSALS

Broadly speaking, Urbis supports the move to recognise the need for proportionality in decision making and to implement a more streamlined assessment pathway for smaller, more inconsequential applications.

We also support the inclusion of VicSmart within the zones and overlays. We believe that this will better align VicSmart with specific policy and clearly articulate when VicSmart can be applied, making it more accessible and user-friendly tool.

There is limited detail within the document on how the new provisions would operate under the reform. As such, the following feedback discusses matters which we believe should be considered with further review.

- Performance based assessment criteria, as opposed to qualitative assessment, is considered appropriate for these applications. This should be a pass/fail test to ensure that assessment is consistent and avoids the ability for subjectivity.
- The small café/restaurant standards propose to incorporate approvals outside the planning system such as footpath occupancy permits. In other sections of the SMART Planning discussion paper it proposes to removal any elements in the planning scheme which do not fall within under the *Planning and Environment Act*. This is one of those instances. Unless footpath occupancy permits are removed from the Local Laws jurisdiction, it is considered that this initiative would be better implemented at an ‘in-house’ level with each Council.
- We encourage further testing to be undertaken on the impact that more VicSmart applications going through the system will have on the Councils capacity to assess and issue decisions within prescribed timeframes. We recommend working closely with Councils to ensure that they have the capacity and procedures in place to successfully implement the reform. If this is not thoroughly reviewed, there is a risk that larger applications will suffer in an effort to meet the statutory requirements for VicSmart.
- Performance based criteria for smaller applications is broadly supported and it is agreed that the VicSmart provisions as they currently exist do not go far enough in terms of the type and extent of applications which may be considered. However, to help alleviate some Council pressure, consideration should be made to expand the list of use and development which can be exempt from a permit. This may include performance criteria to be met if an exemption is to apply.
- It is assumed that performance criteria for applications qualifying for VicSmart will be reviewed as part of this reform. We suggest that it is reviewed and that action is taken such as removing the estimated cost of development threshold criteria. The cost of development is often based on the quality of the build and can disqualify many simple applications from the process. Alternate criteria which measures the impact of a proposal including measures such as floor area, height and distance from sensitive interfaces should be considered. If cost of development is retained as criteria, this needs to be updated regularly to keep up with CPI or increasingly fewer proposals will qualify.
- There are often instances when an application cannot be assessed under VicSmart when it is caught out by a certain zone or overlay affecting the site which, in effect, does not relate to the proposal. For example:
 - An application for minor building and works (such as the construction of a fence) to an education building (school) located in the Neighbourhood Residential Zone and affected by the Heritage Overlay.

The fence qualifies for VicSmart under the Heritage Overlay. However, a permit is required to construct a building or construct or carry works for a Section 2 use under the NRZ. Therefore, this simple application is excluded.

It is supported that zones and overlays include VicSmart criteria. This need to be carefully worked through to ensure that simple applications aren’t caught out by irrelevant or inconsequential controls.

- The codified assessment provisions to be used in the new controls such as the ‘small lot standards’ need to be thoroughly tested to ensure that the provisions don’t result in a ‘cookie cutter’ approach to design and monotony in the housing which fits the criterion.

PROPOSAL 4: SMARTER PLANNING SCHEME DRAFTING

We are supportive of a streamlined approach to the drafting of Planning Schemes to improve their clarity and effectiveness and to make them more ‘user friendly’. We are also supportive of an online planning database which would house documents from all municipalities relevant to each Planning Scheme and the provisions therein.

However, we believe that such initiatives would benefit from additional consultation and industry input as well as regular reviews to ensure they remain relevant as the planning sphere continues to evolve.

More specifically:

- We are supportive of the creation of a new VPP user manual which provides clear guidance to users. However, we consider that industry input should be sought on what this manual should contain and how it should be drafted to ensure it becomes a relevant and frequently used planning tool.

Further, this user manual should be updated regularly and provide a single point of reference so users do not need to visit several platforms to make sense of the document and its contents.

- There are clear differences in the content and drafting of planning scheme amendments between municipalities. We are supportive of a dedicated business unit which would provide a consistent and streamlined approach to this process.

We consider that this initiative would greatly benefit from further consultation and industry input to understand the effectiveness of different approaches and to ensure they are workable. This could be in the form of a panel/advisory committee process whereby detailed submissions could be provided at the outset to help inform the streamlined approach or templates adopted.

Further, the dedicated business unit should be involved at the beginning of the amendment process (i.e. prior to exhibition) and in house training should be provided for Council’s to understand how interpret the guidelines/ business rules for drafting planning scheme amendments.

- We are supportive of the creation of an online planning library/database, particularly as it aligns with objectives to progress to technology driven platforms.

We consider this library should house documents from all municipalities relevant to each Planning Schemes and the policies and provisions within. This should include any documents referenced in the Planning Schemes including (amongst other things) incorporated and reference documents, approved development plans and growth plans.

In addition, any background documents that are not referenced in the Planning Scheme but have informed these key documents should be located here and will avoid the need to search multiple platforms.

- Historical documents should be included in the library and not deleted as they are superseded, similar to the Planning Scheme Histories.

PROPOSAL 5: IMPROVE SPECIFIC PROVISION

Urbis is strongly supportive of efforts to streamline the planning system, provide clarity, improve accessibility to planning information, and reduce duplications by modifying the specific Victorian Planning Provisions. Our specific commentary and suggested amendments to selected provisions are provided at **Appendix A** of this submission.

While we have comments regarding a number of provisions, we draw your particular attention to the proposed changes to the Urban Growth Zone, where we hold strong concerns (see Appendix A). We urge Government to retain the existing drafting of this Zone.

The proposed modifications to the VPPs has the potential to significantly alter the operation of planning in Victoria, and as such, cannot be deemed a “policy neutral” change. Whilst the Smart Planning Discussion Paper outlines broad suggestions for change to stimulate industry feedback, further review and refinement

should be undertaken prior to finalising the revised VPPs. This current consultation stage will inform the review of the specific provisions, however there has been no firm commitment by the State Government to further involve stakeholders in the reform process.

We strongly advocate for further industry involvement in the formulation and review of the specific VPPs. In recent years, significant reforms to specific provisions (such as the Residential and Capital City zones) have been undertaken without public exhibition of the proposed controls. Discrepancies and ambiguities in the drafting of the provisions remained undiscovered until after the controls were adopted and tested in “real life” scenarios, resulting in further planning scheme amendments to rectify errors and omissions, and reliance on the Victorian Civil and Administrative Tribunal to determine the interpretation of ambiguous provisions.

We view these issues could be minimised by:

- Enabling industry input into the drafting of the modified VPPs through the exhibition of proposed zones, overlays and provisions.
- Commitment to periodic review (i.e. 12-18 months after VPPs are gazetted) to address drafting or procedural issues arising from the modifications.

SECTION 2. HOLISTIC REFORM REQUIRED

As recognised by the Discussion Paper, planning schemes have become increasingly complex and, in our opinion, too unwieldy for the non-planner to understand and navigate.

It is our strong view that any major reform of the Victorian Planning Provisions should be undertaken in concert with a review of the Planning and Environment Act 1987 (as amended), the PE Act, and the Planning and Environment Regulations 2015 as well as an opportunity to integrate other legislation that interacts with the land use consenting system, such as the Subdivision Act 1988, Land Acquisition and Compensation Act 1986; Transport Integration Act 2010.

While reform of the PE Act may not be within the current remit of the VPP reform – we strongly encourage the State Government to reconsider this to give real effect to reforms that would deliver the sort of impacts that planning needs, such as more timely and more efficient decisions and greater accountability.

We consider that it is the ‘sum of the parts’ that combine to provide the planning framework and which affect its every aspect starting with its legibility through to its objectives and purpose; application, operating efficiency or inefficiency (e.g. decision making), clarity and use- friendly nature.

A broader and more holistic review would ensure the best and most integrated outcome for all users of the system can be achieved. Later in this section we refer to other jurisdictions in both Australia and overseas to ask whether they have been considered by the VPP Smart Planning reform group in terms of learning from best practice elsewhere.

While we consider the Victorian planning system is inherently flexible, there is considerable merit to considering and adapting alternative methods for Victoria. To highlight this, we refer to New Zealand’s Resource Management Act 1991 (RMA) and some of its components, such as private-led planning scheme amendments as one example that supports some our recommendations herein.

Under the following headings, we set out a number of broader reform recommendations that should be contemplated alongside reform to the VPPs. In summary, these are:

1. Reform to the PE Act to make the planning approval process more efficient, timely and accountable, including amongst other recommendations:
 - a. Deemed approvals within specific timeframes
 - b. Greater accountability for decision making, including stronger award of compensation processes
 - c. Provide for greater efficiency and de-politicalising of planning approvals in line with approved Planning Scheme
 - d. Allow for consideration of important and city-shaping projects through Development Advisory Committees
 - e. Place greater emphasis on decisions against specific Clauses in the planning scheme by removing or limiting the ‘catch all’ provisions of Section 60 in the PE Act and Clause 65 of the VPPs
2. Removal of ‘prohibited uses’ from all zones and replacement with a ‘Non-Preferred Use’ category for which a merits based application and assessment process would apply; OR
3. Ability to apply for any person to initiate a private planning scheme amendment under a clearly legislated pathway with full appeal rights.

WHY IS REFORM OF THE PE ACT REQUIRED ALONGSIDE THE VPPS?

Context

Planning decisions affect the lives of all Victorians. Effective application and oversight of planning processes is essential for preventing inappropriate land use and development, and for enabling all stakeholders to have confidence in the planning system. For these reasons, it is vital that planning decisions are efficient, evidence-based and supported by a transparent decision making process.

Inefficiencies caused by delays, complications or ambiguity in assessing and deciding planning applications can create uncertainty, concern and angst for all stakeholders. It can increase the costs borne by both government and business, as well as constrain economic development - the impact of these inefficiencies often more acute for government and business without scale and with limited resources, knowledge and expertise.

Significant development can also create negative externalities. These can adversely impact the amenity and wellbeing of local communities and regions; the quality of the environment and heritage values. It is the role of the planning system to balance these sometimes competing social, environmental and economic factors.

The planning system plays an important role in regulating these factors, in ameliorating externalities as well as facilitating economic growth in key industries and the broader economy, creating a housing supply, providing important open space, leveraging developer contributions and managing conflicts.

Delivering sustainable development outcomes that protect Victoria's prized liveability is also a priority for Government and is a central objective of the planning system - as important as economic growth.

Reform of the VPPs is only half of the process

Reform of the structure and legibility of planning schemes through the VPPs, such as integrated policy sections or clarification of nomenclature will only be so effective for addressing a number of common complaints about the planning system.

The fact is that most people interact with the planning system only when they require a planning permit. Reforms to the VPPs is, therefore, only half of the story.

Timing, costs, delays and the impact of planning appeals through the Victorian Civil and Administrative Tribunal (VCAT) are without doubt significant factors that influence the operation of planning and create perceptions from its users about its operation – real or otherwise. These issues can only be addressed so far by the VPPs because they are matters that default to the PE Act for their process.

What can be said confidently is that for any party involved in a regulatory process, lengthy delays in process create inefficiency, uncertainty and come at a cost – be it time, dollar (\$) value, resources or, most likely all three. More complex projects, by their very nature, will inevitably magnify these factors.

Any streamlining of the VPPs to make it clearer, shorter, more specific or to reduce duplication will only be so effective if it removes the need for a planning permit. When a planning permit is triggered, the planning process will remain as it is currently in terms of many of its key steps and issues. This includes the vagaries associated with policy interpretation; further information requests, referral timeframes and politicised local issues.

For these reasons, we consider that reform of the PE Act needs to occur alongside the VPP reforms. We explore some suggestions further below.

Possible Changes to the PE Act alongside the VPP Reforms

Several of the recurring criticisms of planning in Victoria, notably certainty, timing and efficiency could or should be managed by reform of the PE Act (alongside the VPPs) in a number of ways, including:

- Presumption in favour of development unless a decision maker can materially demonstrate why development should not be approved; and
- Deemed approvals – development is automatically deemed to be approved if the decision maker has not made a decision within a period specified in the PE Act (or Regulations). An applicant should not

be further penalised by having to chase a decision through VCAT, particularly given the significant costs of some applications via planning permit fees and the metropolitan planning levy.

- Deemed approvals may have different time periods for different scales of development e.g. cost or scale of development.
- Compensation – significantly strengthening the award of costs (and process) through VCAT so that vexatious appeals (e.g. objector) and spurious decisions by a responsible authority (e.g. Councillors overturning an officer recommendation without due policy support) could be the subject of larger awards of costs
- In support of the previous recommendation, in situations where Councillors (generally not trained planning professionals) decide against an officer recommendation, oblige the Councillor making the motion to do so defend that decision in person at VCAT along with any award of costs applications.
- Enshrine into the PE Act that the submission of a referral authority, objector or submission must not be considered or even referred to in any decision-making process by a responsible authority where it is not received within the statutory referral/ notice time period.
- Limit the scope of Section 60 of the PE Act because it is too permissive and broad and provides a 'catch all' to enable almost any matter to be introduced into the decision making process. Council policies and controls should be adequately robust and well-conceived that reliance upon a 'catch all' be avoided. Note: Similarly, Clause 65 of the VPPs needs to be reformed or removed alongside Section 60 to require all decisions to be made against clear development controls.
- Any decision of a responsible authority to refuse a planning permit must be accompanied by specific reasons for refusal and cite the specific clauses of a planning scheme against which the decision was made. This would encourage Council's to ensure their policies and controls are robust, well-evidenced and up-to-date.
- All VCAT appeals against the refusal of a planning permit can only consider the specified grounds for refusal. All other matters are deemed to be satisfactory and cannot be considered by VCAT. This would limit the scope of VCAT hearings and have positive impacts on costs, timing and resourcing.
- Provide for Development Advisory Committees to deal with significant and city-shaping projects.

Such a package of reform to the PE Act, alongside any reform to the VPPs we have supported elsewhere in this submission would bring clarity to decision making periods, ensure decisions timeframes are reduced, make decisions makers more accountable and bring greater recognition to the significant costs that can be incurred due to delays brought about by spurious decisions or appeals.

AMENDING OR REVIEWING A PLANNING SCHEME - AGILITY OF THE PLANNING FRAMEWORK

Context

Another issue of the planning system in Victoria is the rigidity of planning schemes and most notably the zone system, which requires a planning scheme amendment if a use or development is prohibited.

It is almost impossible for the VPPs and planning schemes to be up-to-date and to have regard for all possible eventualities and future circumstances, no matter how forward thinking a planning authority might be.

Under the heading '*Inadequate policy review and upkeep*' on page 16 of the Discussion Paper, it effectively acknowledges that planning schemes and policies are not being kept up to date, which by inference alone can suggest policy conflict and uncertainty.

Urbis recognises that Victoria, generally, has a flexible strategic and statutory planning system available to it. It is formed by the Victorian Planning Provisions (VPPs) which establish the strategic policy context that applies to land and a standard framework of zones, overlays and particular provisions apply the controls that apply to each municipal area within the state.

Any planning scheme can be written to be as controlling or enabling of development as required. The VPPs provide the ability to introduce state-wide standardised provisions and controls and can nominate any body, agency, or person to be a RA for receiving and determining planning permit applications.

The architecture of the Victorian planning system allows, at its most facilitative, any planning scheme to be written in such a way that any use and/or development could be exempt from requiring a planning permit. Combinations of zones, overlays and particular provisions can provide all levels of control over development. This includes the ability to trigger notice and third party review (VCAT appeal) rights or, alternatively, to remove them entirely.

Done well, broad area strategic planning implemented into a planning scheme can address a range of issues 'up-front', such as prioritising areas for the growth (residential, commercial, industry etc). It requires a scheme to be forward thinking.

In practice, the layering of the planning framework, in our experience, continues to become ever more complex and protectionist i.e. layers of control and policy are added but rarely are they taken away. As the Discussion Paper suggests (on page 16), local policies are being introduced and used as pseudo-planning controls, quite often in our experience in a reactionary manner:

Expansive local policies that seek to compensate for gaps in zone and overlay

There are 82 planning schemes across Victoria, each administered by a different municipal Council. Each scheme contains different local policies and can apply very specific localised controls to land. Different planning permit application requirements can also be set. Such variability can be considered, by users of the system, to be confusing and unpredictable, particularly if a business operates across multiple jurisdictions and needs to navigate its way through varying policies and controls.

The Discussion Paper effectively acknowledges this issue. It states, on page 30, that there are 798 local policies across all the 82 planning schemes in Victoria, an average of just under 10 per planning scheme. On top of this there are 797 Design and Development Overlays (DDOs) and 651 **Development Plan Overlay** (DPO) schedules. These are not insignificant in number as additional layers to the planning system.

What happens when a planning scheme cannot foresee particular outcomes?

In a world of fast changing and evolving technology, building practices and materials and the ever-increasing trend and ability to mix and integrate a range of different use and development typologies – the need for planning to be adaptive and flexible should no longer be dependent on a need to amend a planning scheme when a development is identified as 'prohibited.

This issue is heightened by the fact that the current PSA process has limited process associated to it (e.g. timing) and cannot be initiated by anyone other than a planning authority.

Urbis recognises that policies may have clear relevance and purpose at inception, but time and changing circumstances can quickly erode their relevance.

This is not a criticism of 'localism' in the planning process. Indeed, a natural argument to some of the above concerns is that local policies are a necessary requirement to respond to local circumstances and it is the subjective nature of the planning system that provides appropriate flexibility to enable local decision makers to make decisions in the broader interests of their local community.

Removing Section 3 (prohibited) uses

In the most simple reform, removal of prohibited uses, *Section 3* uses, from every zone would be one method of freeing up the planning system so that the merits of a use and or development could be reasonably and fairly tested simply through the planning permit process. This could be applied only to metropolitan Melbourne as a starting point given this is where the greatest pressure on land exists and will increasingly require a more responsive planning system.

Certain uses likely to cause conflict with sensitive uses, such as brothels or adult bookshops close to schools for example, could be subject to their own Particular Provision.

Prohibited uses could be replaced with a '*Non-Preferred Uses*' category to each zone and set out by the VPPs. It would allow an applicant to apply for a planning permit on its merits. For the purposes of consistency, council's should not have the ability to set 'non-preferred uses' locally.

The purpose of doing this would be to overcome the issue highlighted in the Discussion Paper that planning schemes are not kept up-to-date. By putting in place a formal mechanism (into the planning system) to contemplate alternative uses of land that would not involve a planning scheme amendment – it could save a significant administrative process. This would be especially relevant if policy is not keeping pace with changing land use needs.

The tests for a 'non-preferred use' through the planning scheme could be set out in the zone and require an applicant to demonstrate consistency with State planning policy and place an emphasis on up-to-date local planning policy/ evidence. Where planning schemes are out of date, such as policies older than three or four years, then decision guidelines could make it clear that less weight would be afforded to any local policy, particularly, for example if State policy had changed. A level of assessment similar to a PSA could be built into the consideration of a 'non preferred use'.

We consider the alternative below of enabling proponent led planning scheme amendments.

Proponent led planning scheme amendments

The second alternative to the above is to amend the PE Act to enable a proponent to prepare and submit a planning scheme amendment under a new, clearly, defined, process.

We consider the New Zealand planning system later in the next section, which includes consideration of an example of proponent (private) led planning scheme amendments to illustrate an alternative approach.

LOOKING ELSEWHERE

The Discussion Paper and DELWP's doesn't appear to have significant regard to planning reform in other jurisdictions. It is noted that it references Code Assess processes in New South Wales and Queensland.

While we acknowledge that the VPPs are a good basis for land use planning in Victoria, there can be much gained from observing different practices in terms of what works (and doesn't) from elsewhere both in Australia and overseas.

The majority of planning schemes (or equivalent) in jurisdictions with systems that can be compared to Victoria, notably the other States and Territories in Australia, New Zealand, the UK and North America typically have similar components:

- 1) Policy
- 2) Plan based guidance
- 3) Development controls

The complexity of each system, local circumstances, and the experience and interaction of different user groups is such that it is impossible to point to a 'perfect system'. Each has to balance a range of competing local objectives and provide a fair and orderly process for dealing with development and change, including engagement with affected parties.

Nonetheless, each system has its own character and method of dealing with similar matters and could provide valuable learnings for Victoria that could be 'cherry picked' and adapted.

In the UK, for example, there is no such thing as defined zones or prohibited uses. This is particularly effective in increasingly dense urban environments where land is a limited resource, competition for land high and the inability to easily segregate uses. This is something becoming increasingly relevant to Melbourne in its established areas.

Elsewhere, New South Wales and South Australia have recently made moves to put in place planning frameworks that facilitate 'State Significant' development.

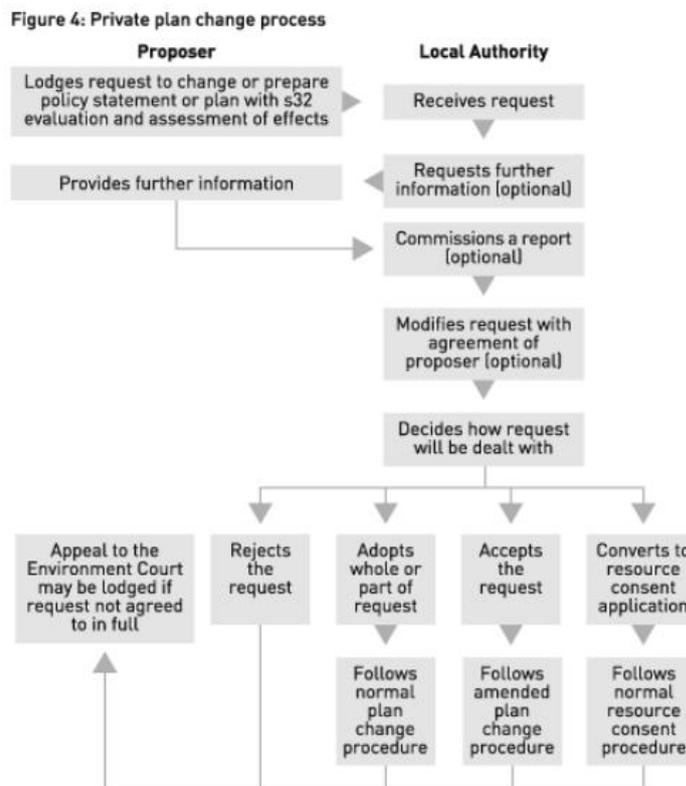
Case Study - New Zealand's RMA and planning processes.

New Zealand undertook a 'root and branch' reform of its environmental planning in the early 1990's which culminated in the creation of the Resource Management Act 1991 (the **RMA**). This brought together, under single legislation, the management of air, soil, fresh water, coastal marine as well as land use and infrastructure provision. A total of 69 separate acts and amended acts were repealed by the introduction of the RMA. It goes to our earlier point about the increasing interdependencies of planning with a range of other acts. Is now the time, for example, to contemplate bringing acts, such as the Subdivision Act together with the PE Act to create a single land use consenting Act?

In terms of planning controls under the New Zealand's RMA, the equivalent of planning schemes, such as the Auckland Unitary Plan, set out a range of different activity classes that deal with development in different ways and the need for a consent (a planning permit in Victoria) or otherwise. This includes (summarised):

- **Permitted activities** – can be carried out without consent (planning permit in Victoria), subject to meeting any requirements or conditions in any specified plans, regulations or permissions of the RMA
- **Controlled activities** – the consenting authority must grant a consent (subject to certain matters) unless the activity would have more than 'minor' impacts.
- **Restricted discretionary activity** – the consent authority can only use its discretion over the matters specified in the relevant plan
- **Discretionary activity** – the consent authority can exercise full discretion about granting consent.
- **Non-complying activity** – a consent can be granted, but an applicant must first demonstrate that the impacts on the environment would be minor or contrary to the objectives of a relevant plan or proposed plan. A potentially affected person, who has given written approval to an applicant, would not have any effect upon them considered by a consent authority.
- **Prohibited** – an activity cannot be carried out. A party wishing to carry out a prohibited activity must first apply to change the relevant plan to re-classify the activity.

Private plan changes, requested by a proponent, are permitted New Zealand's RMA¹. As suggested under the last bullet point above ('prohibited' activity class), this provides a specific pathway, as illustrated below in **Figure 1 below**, to adapt a plan (an equivalent to a planning scheme) where the merits of a proposal can be established despite what a planning scheme (plan) says. The RMA process also includes an ability to appeal to the Environment Court (the equivalent of VCAT) under various circumstances, including if a request is rejected by a Council.



¹ See Clause 21, Schedule 1 of the Resource Management Act.

Most notable of the private plan change request under the RMA (as above) is the ability for it to be converted into a resource consent application – a planning permit application in Victoria. This is recognition that a private plan change or removing prohibited uses from a planning scheme are tantamount to the same process – a merits based assessment.

There are also generally considered to be limited grounds upon which a private plan change can be rejected², whereby each should be determined on their merits, unless:

- It is frivolous or vexatious
- The local authority or Environment Court has considered the substance of the request within the last two years
- The request is not in accordance with sound resource management practice
- The request would make the policy statement or plan inconsistent with the provisions of the Resource Management Act relating to plans (Part 5)
- The policy statement or plan has been operative for less than two years

The last dot point goes to some of the issues highlighted in the Discussion Paper about planning schemes being out of date and creates a method for providing relevance to a planning scheme and how up-to-date it is.

Reference to the planning system under New Zealand's system is not to say that it is more effective; better or even directly transferrable to Victoria. Like every system, it has received its own share of criticism and calls for reform. Nonetheless and like several of the other jurisdictions we mention, there may be aspects of best practice elsewhere that may warrant further investigation or which could be adapted to suit Victoria. These include an expansion of the different activity classes such as those adopted in New Zealand that could help to set up different approval pathways and streamline approvals relevant to the scale of use and/or development – which could be adopted into Code Assess. Similarly, the ability to apply for private planning scheme changes under a process established in legislation is something we have already advocated in this submission.

Likewise, our suggestions herein in respect of more stringent costs awards are based on approaches in Queensland, such as those introduced in 2012. Similarly, the UK has long had a strong award of costs component in its planning appeals system. We make this recommendation because we feel it would have significant merit in improving the efficiency and accountability in the planning system and helping to limit or reduce vexatious or poorly evidenced decisions.

² Clause 25 Schedule 1 Resource Management Act 1991

APPENDIX A RESPONSE TO SPECIFIC PROVISIONS

ID. No.	Clause No.	Name	Modification	Justification	Urbis Comments
ZONES					
1	30	All zone schedules	<p>Review all zone schedules having regard to the following:</p> <p>a) Enhance the Ministerial Direction – The Form and Content of Planning Schemes to limit structural modifications (such as to headings and order, etc) and ensure consistency across the VPP</p> <p>b) Ensure the distinction between the state and local clauses remains clear.</p>	<p>Maintaining consistency throughout the VPP and across various council planning schemes would increase certainty for applicants, reduce confusion, and maintain a reliable assessment framework. Local variations should occur within strong parameters to ensure consistency with the purpose and powers of the VPP parent provision, and reduce structural inconsistency between schedules across the state.</p> <p>Digitisation of planning scheme content and the amendment process (PSIMS) would assist in ensuring a consistent structure for schedules.</p>	<p>Parameters for local variations should be clearly stipulated to ensure clarity.</p> <p>There is an opportunity to reduce duplication of content in the parent clause and schedule to provide a more focused and succinct control.</p>
2	30	All zones	<p>Review zones having regard to the following:</p> <p>a) Rename zones from being numerical (for example, 'Industrial 1 Zone') to being descriptive and adopting everyday words, such as used for the residential zones</p> <p>b) Examine the role and function of the following zones to establish whether they can be replaced with other VPP tools (such as the Mixed Use Zone or</p>	<p>These reforms are designed to improve the usability and clarity of the VPP, through renaming zones so that they better correspond to their purpose, removing unnecessary zones with more targeted controls, and using consistent terminology to limit common points of confusion.</p>	<p>Renaming zones with broader descriptive titles may erode the hierarchy of zones.</p> <p>We recommend access to reference documents be provided through the corresponding clause to improve accessibility.</p> <p>We support the removal of the Priority Development Zone and Activity Centre</p>

			<p>the Commercial 1 Zone and an Incorporated Plan Overlay or Development Plan Overlay), or amalgamate the following zones into a single zone that can be tailored to reflect local circumstances:</p> <ul style="list-style-type: none"> i. Priority Development Zone ii. Activity Centre Zone <p>c) Create consistency in use of phrasing where a common meaning applies (such as the phrases 'generally in accordance with', 'generally consistent with' and 'in accordance with').</p>		<p>Zone, as these provisions are overly cumbersome.</p>
3	32	All Residential Zones	<p>Review residential zones having regard to the following:</p> <ul style="list-style-type: none"> a) Make single dwellings on lots greater than 300sqm exempt from a planning permit by lowering the threshold for a permit from 500 to 300sqm (they are already exempt on lots greater than 500sqm), relying on the building code to address siting and design issues b) Make 'Childcare Centre' a Section 1 (as of right) land use within the Residential Growth Zone, subject to conditions, such as relating to size c) Redraft the following phrase used uniquely in the residential zones as a permit trigger: 'construction and 	<p>The proposed modifications seek to improve the consistency of provisions, remove unnecessary permit triggers and allow for more as of right land uses in residential areas.</p> <p>The package of single dwelling provisions, including Rescode in the VPP and Part 4 of the Building Regulations work together to regulate single dwellings. Relying on the building system to regulate single dwellings (except where an overlay applies) would reduce regulatory burden, and assist homeowners, whilst protecting local amenity through its siting and design provisions. Existing overlays would continue to trigger planning permits where</p>	<p>Greater emphasis should be placed on the purpose of the zone for community and health uses.</p>

			extension of ...' and adopt the more commonly used 'to construct a building or construct and carry out works ...' to create consistency with other zones.	special circumstances apply, such as heritage areas.	
4	32.04	Mixed Use Zone	<p>Review the Mixed Use Zone having regard to the following:</p> <p>a) Make more commercial uses in the Mixed Use Zone Section 1 (as of right) land uses where they are low impact, subject to conditions</p> <p>b) Make 'Manufacturing Sales' a Section 1 (as of right) land use with a condition relating to floor area size to support the establishment of small 'makers' and creative industries</p> <p>c) Make 'Childcare Centre' a Section 1 (as of right) land use, subject to conditions, such as relating to size.</p>	<p>Providing a greater range of land use exemptions (subject to conditions) in the Mixed Use Zone would facilitate commercial and community-focused activity and streamline the planning application process for applicants. Floor area caps would ensure the beneficiaries of these changes are predominantly small-scale businesses. It is important to ensure the planning system does not unnecessarily burden new small business with costs and timeframes which may be prohibitive and disproportionate.</p>	<p>The Mixed Use Zone should be removed from the residential suite of zones., reflecting its truly 'mixed use', especially as it is often used for land zoned away from Industrial, where business is expected to also locate.</p>
NA	34.01	Commercial 1 Zone	None proposed	None proposed	<p>Land uses such as place of assembly, amusement parlour, hospital and gymnasium should be categorised as Section 1 Uses.</p>
NA	36.01	Public Use Zone	None proposed	None proposed	<p>The strict signage controls in the Public Use Zone has resulted in the need for site specific amendments for large institutions.</p>
11	37.07	Urban Growth Zone	Review the Urban Growth Zone having regard to the following:	At present, upon approval of a precinct structure plan (PSP) in Melbourne's	<p>Whilst this approach may promote consistency, make the controls easier</p>

			<p>a) Upon gazettal of a precinct structure plan, land is rezoned to the applied zones specified within the zone, with the PSP implemented using existing VPP tools, and therefore eliminating the concept of applied zones and removing the need for a later planning scheme amendment</p> <p>b) Reduce the complexity of future UGZ schedules through a more limited and rigid structure.</p>	<p>growth areas, land remains zoned Urban Growth and a number of other zones are 'applied' through the provision but not by zone mapping. This represents a departure from the philosophy of the VPP and is a source of confusion particularly among non-professionals. The 'applied' zone is also not recognised when basic queries are made in relation to zoning, such as planning property reports. This change would rezone land to the identified 'applied' zone automatically and reduce cross reference between different parts of the VPP and structure plans. This would ultimately improve useability, promote consistency, reduce the need for future planning scheme amendments, and ensure compliance with the VPP philosophy.</p> <p>Through the PSP negotiation process, many UGZ schedules become lengthy and complex, becoming 'planning schemes within a planning scheme', and moving away from the VPP principle that the planning scheme should be read as a whole. Stricter heading structures and a tighter 'head provision' should reduce excessive length and simplify the zone for all users.</p>	<p>to understand and reduce the need for a future planning scheme amendment the following preliminary issues are noted.</p> <ul style="list-style-type: none"> • Flexibility may be lost in the delineation between zones (i.e. between town centres and residential areas). • At current, an applied zone of Commercial 1 is used for town centres. The boundary between the town centre (commercial 1 zone) and residential areas is determined through an Urban Design Framework or superlot subdivision, which creates the town centre lots. Having the 'applied zone' in from the start of the PSP would pre-empt the designation of land in the town centre, which would lock in a particular outcome prior to the required investigations. If the delineation between the zones was to change following investigations, a planning scheme amendment would be required to correct this. • There are also benefits in having 'variable' zones, i.e. an applied zone base of residential, but allowance for small offices for example. Or the ability for a convenience restaurant
--	--	--	---	---	---

					<p>to be established within an applied residential zone, when adjacent to a road proposed as a future arterial road. Both of these scenarios are currently prohibited within the current residential zoning.</p> <ul style="list-style-type: none"> The current UGZ schedule provides exemption for third party notification and appeals, meaning that applications within the UGZ schedule are not subject to advertising. The General Residential and Residential Growth zones do not necessarily provide this exemption.
13	42	Environmental and landscape overlays	<p>Review all environmental and landscape overlays having regard to the following:</p> <p>a) Amend the head provision to relocate the 'Table of exemptions' to Clause 62.02-3 and insert the following words "No permit is required to remove, destroy or lop vegetation to the minimum extent necessary if any of the exemptions listed in the Table to Clause 62.02-3 apply".</p> <p>b) Increase opportunities for permit exemptions (such as associated with a single dwelling) by ensuring permit triggers are linked to the purpose of the control</p>	<p>This change seeks to increase useability by ensuring that all permit exemptions related to vegetation are listed at Clause 62. This provides a central location and reduces lengthy provisions appearing multiple times, thus improving transparency and functionality of the VPP. Other reform suggestions seek to review the consistency between the structures of schedules, and apply a standard approach to the rationale of permit triggers to ensure they are adequately justified in their application.</p>	<p>An Arborist report should be treated as a discretionary application requirement to provide more flexibility in circumstances where trees are to be removed on the basis of the overall outcome and landscape setting. This should be consistent across all landscape overlays.</p>

			c) Ensure consistency across all schedules.		
14	43.01	Heritage Overlay	<p>Review the Heritage Overlay having regard to the following:</p> <p>a) Review the proposed reforms to the overlay as proposed by the Heritage Provisions Advisory Committee, such as clarifying whether the overlay recognises precinct-wide or site specific values</p> <p>b) Create consistency in use of words where a common meaning applies, such as 'cultural significance', 'heritage value', 'heritage interest' and so on</p> <p>c) Create a new permit exemption for minor buildings and works, which do not affect heritage values, such as small verandas and pergolas and maintenance and the minor upgrade of railway infrastructure. Consider limiting exemptions to non-contributory buildings</p> <p>d) Review the use of exemptions for certain minor buildings and works, such as those cited in Yarra and Moreland Council incorporated documents, to determine if these exemptions can be introduced more broadly across Victoria</p>	<p>These items of reform seek to improve the clarity of the Heritage Overlay and the public's understanding of heritage precincts, sites and buildings. This includes implementation of recommendations from the Heritage Provisions Advisory Committee Final Report (2007), and exploring new opportunities for permit exemptions in inappropriate circumstances. In the context of the widespread application of the Heritage Overlay, these changes could result in far fewer permits for minor matters.</p>	<p>The Heritage Overlay should be linked to Council's local heritage register or Heritage Victoria's register.</p>

			and made more transparent and accessible.		
15	43.04	Development Plan Overlay	<p>Review the Development Plan Overlay having regard to the following:</p> <p>a) Amend the exemption from notice and review provision to remove the 'catch 22' provision.</p>	<p>The 'catch 22' provision is set out in <i>Saunders v Frankston CC (Red Dot)</i> [2009] VCAT 144 (19 February 2009) and concerns the literal translation of notice and review provisions and Section 52(1A) of the <i>Planning and Environment Act 1987</i>. Clarifying this clause would remove a source of confusion.</p>	<p>This modification should be extended to other applicable overlays.</p> <p>The informal notice and/or exhibition of Development Plans should be not be included in DPO Schedules/.</p>
16	43.05	Neighbourhood Character Overlay	<p>Review the Neighbourhood Character Overlay having regard to the following:</p> <p>a) Examine the role and function of the Overlay in the context of the new Neighbourhood Residential Zone, and other VPP tools.</p>	<p>The Neighbourhood Residential Zone has been applied widely, particularly within many of Melbourne's inner and middle suburbs, to control development and particularly density. In doing so, the role of the Neighbourhood Character Overlay has been reduced, although its function in controlling demolition remains distinct. In this respect, review of the Neighbourhood Character Overlay is warranted to determine if it could be removed to simplify the VPP.</p>	<p>Support removal of the Neighbourhood Character Overlay on the basis that the Neighbourhood Residential Zone and numerous local policy and municipal character documents exist to perform this function.</p> <p>There is an opportunity to consolidate these local character studies and statements into the Neighbourhood Residential Zone.</p>
20	44.03	Floodway Overlay	<p>Review the Floodway Overlay having regard to the following:</p> <p>a) Increase opportunities for permit exemptions and ensure permit triggers are linked to the purpose of the overlay</p> <p>b) Improve access to flood levels required to ensure drawings are</p>	<p>These improvements would streamline the planning process and reduce unnecessary time delays at planning stage by encouraging applicants to obtain information upfront. Under the proposal, permit exemptions would be increased for minor matters or where design mitigates flood risk. Remaining permit triggers</p>	<p>Water authority requirements should be integrated into the overlay to promote ease of access to the relevant information, and early warning to land owners.</p>

			compliant prior to submitting a planning permit application.	would be specific to the purpose of the overlay only, and not a 'catch all'.	
23	45.02	Airport Environs Overlay	<p>Review the Airport Environs Overlay having regard to the following:</p> <p>a) Ensure the overlay reflects the new Federal standards and associated noise contours</p> <p>b) Consider the amalgamation of the overlay with Melbourne Airport Environs Overlay.</p>	<p>Updating this provision would increase the accuracy and relevance of the overlay. There is an opportunity to simplify the VPP by amalgamating this overlay with the Melbourne Airport Environs Overlay, using a schedule to account for the particular needs of different airports. The overlay could also be repurposed to cater for heliport flight paths rather than the DDO as occurs currently.</p>	<p>We consider this approach could also apply to other state significant infrastructure.</p>
24	45.07	City Link Project Overlay	<p>Review the City Link Project Overlay having regard to the following:</p> <p>a) Review the role and function of the overlay and consider deletion and replacement with Clause 52.03 Specific Site and Exclusions if a need for special provisions remains, noting the recommendation to map Clause 52.03 items</p> <p>b) Amend the head provision to rename the document as 'Melbourne City Link Project – Advertising Signs Location September 2014' in the Purpose and in Clauses 45.07-2 and 45.07-3.</p>	<p>It is considered that the City Link Project may no longer warrant its own overlay, given its completed state, and may be more suitable for inclusion within Clause 52.03 Specific Site and Exclusions. Updating the document reference to the latest version would increase the accuracy of the VPP.</p>	<p>Support removal</p>

25	52.03	Specific Sites and Exclusions	<p>Review Specific Sites and Exclusions having regard to the following:</p> <ul style="list-style-type: none"> a) Remove outdated provisions b) Establish clear rules around when it can be used to avoid overuse c) Establish the practicality of mapping all items within a new Specific Provisions Overlay to improve transparency and public awareness. 	<p>Intended to be used sparingly, Clause 52.03 Specific Sites and Exclusions has been increasingly used in recent years. It is used to facilitate projects where other VPP provisions may be more suitable, to the detriment of the VPP. As one of the more powerful tools, its provisions can set aside the entire scheme. Despite this, it lacks transparency and does not appear in common searches such as a planning property report. As such, it is commonly overlooked. To increase transparency, the sites subject to Clause 52.03 would be mapped through a new overlay. If this is unachievable, this practice should be adopted for all new entries. Removal of an entry where its application is no longer needed (say, because the project is complete) should also take place to reduce the size and complexity of the VPP.</p>	<p>Clause 52.03 has played a useful role in allowing approvals of State Significant projects, and we urge Government to further consider how these projects might otherwise be approved.</p>
NA	52.05	Advertising signs	None proposed	None proposed	<p>Advertising signs should be updated to provide greater clarity and reflect contemporary signage design.</p> <p>The minimum 10 year expiration date for major promotion signs should be removed.</p> <p>Zones should be reviewed with regard to Category 4 signage, in particular the Public Use Zone.</p>

					The digital signs should be permit-required (rather than prohibited) in a broader range of Zones, including residential zones, as they provide the opportunity for timely information to be readily updated
28	52.10	Uses with Adverse Amenity Potential	<p>Review Uses with Adverse Amenity Potential having regard to the following:</p> <p>a) Review buffer distances taking into account the Environmental Protection Authority's Recommended Separation Distances for Industrial Residual Air Emissions – Guideline (2013)</p> <p>b) Review and clarify the clause's application in 'reverse amenity' matters.</p>	The buffer distances currently referenced within Clause 52.10 are based on an outdated guideline. It is important to update them as industries and their impacts have changed over time, as have community expectations. This would ensure the VPP remains effective and that controls are proportional to the impact of new development. There is also an opportunity to review whether the clause should operate in reverse amenity matters, which is when a sensitive use is proposed near an existing use creating amenity impacts. This would clarify a point of confusion and may reduce land use conflicts between landowners and the community.	Support
33	52.27	Licensed Premises	<p>Review Licensed Premises having regard to the following:</p> <p>a) Review the role and function of the planning system in licensed premises and explore opportunities to minimise conflict and overlap with the Victorian</p>	There is duplication between the permit process set out at Clause 52.27, and the liquor licencing process as managed by the Victorian Commission for Gambling and Liquor Regulation. This double-up takes valuable resources and creates lengthy timeframes and added costs for	<p>Support modification to review requirement for planning permit application for liquor licenses, noting the parallel assessment undertaken by the Victorian Commission for Gambling and Liquor Regulation.</p> <p>Support proposed modification to provide permit exemptions to small</p>

			<p>Commission for Gambling and Liquor Regulation licencing process</p> <p>b) Make premises in commercial zones exempt from the need for a planning permit, subject to certain conditions, and relying on the Victorian Commission for Gambling and Liquor Regulation licensing process</p> <p>c) Include and clarify common application requirements, such as 'cumulative impact statements'.</p>	<p>applicants, particularly for small business such as cafes and restaurants.</p> <p>Removing duplicate processes would simplify the planning system and ensure regulation is better targeted. Any change would need to ensure important community issues continue to be addressed. This would implement the 'land use focused' principle of a modern planning scheme.</p> <p>Any change would need to maintain consideration of important community issues in relation to licensed premises. Consistent with a number of facilitative changes for small business, it is considered that premises within commercial zones could be exempt from the need for a planning permit for licenced premises, subject to conditions. Consolidation and review of application requirements would also improve useability.</p>	<p>cafes/restaurants. Proposed exemptions should be exhibited and reviewed.</p> <p>Support modification to clarify application requirements.</p>
34	52.28	Gaming	<p>Review Gaming having regard to the following:</p> <p>a) Review the role and function of the planning system in gambling and explore opportunities to minimise conflict and overlap with the Victorian Commission for Gambling and Liquor Regulation licensing process.</p>	<p>Removing duplicate processes would simplify the planning system and ensure regulation is better targeted. Any change would need to ensure important community issues continue to be addressed. This would implement the 'land use focused' principle of a modern planning scheme.</p>	<p>Alone, Clause 52.28 does not result in duplicate processes with the VCGLR. It is the application of local policies that have resulted in duplication. Urbis agree that a review of policies to minimise conflict and overlap would be preferable. Planning regulation in this space should remain focused on land use issues – issues</p>

					dealing with the operation and management of venues should defer to the expertise of the Commission.
35	52.29	Land Adjacent to a Road Zone Category 1 or a Public Acquisition Overlay for a Category 1 Road	<p>Review Land Adjacent to a Road Zone Category 1 or a Public Acquisition Overlay for a Category 1 Road having regard to the following:</p> <ul style="list-style-type: none"> a) Clarify permit triggers and application requirements, in particular whether an alteration to access can refer to a change in use as well as a physical alteration b) Include a definition for the term 'create or alter access' c) Amend the provision to provide additional permit exemptions d) Explore the possibility of using standard VicRoads conditions to avoid referral e) Make access to a service road (other than an excluded service road) exempt from referral to VicRoads f) Make applications under this clause exempt from normal notice and review provisions. 	<p>This provision has been the subject of much confusion and a number of 'Red Dot' decisions at VCAT. It is important that this provision is updated to better reflect the current requirements of VicRoads and DELWP and to reduce unnecessary permit triggers and referral requirements.</p> <p>Clarification on the scope of permit triggers would assist councils in understanding how to process applications which fall under this provision, while also creating added transparency for applicants. Adopting standard conditions to avoid referrals could streamline the permit process and produce time savings for applicants and reduce the administrative burden for councils.</p>	<p>Support clarification to permit triggers and referral requirements.</p> <p>Third party review rights should be removed where this provision is the only planning permit trigger for notification (as per Clause 52.06).</p>

36	52.34	Bicycle Facilities	<p>Review Bicycle Facilities having regard to the following:</p> <p>a) Update bicycle rates to reflect environmental sustainability goals, the needs of modern businesses and increased popularity of cycling as a transport mode, particularly with respect to offices</p> <p>b) Provide rates for more types of development.</p>	<p>As with Clause 52.06 Car Parking, Clause 52.34 Bicycle Facilities requires review to better reflect sustainability initiatives, the needs of modern business and the increased popularity of cycling. This would better implement existing policy, such as encouraging alternative transport modes, and increase the relevance of the VPP.</p>	<p>Consideration should be paid to communal bike share arrangements, as the proposed amendments may require significant space to accommodate.</p>
38	54, 55, 56 and 58	Residential development and subdivision provisions	<p>Review Clause 54,55,56 and 58 having regard to the following:</p> <p>a) Clarify the relationship between the standards and objectives, and particularly whether full compliance with the standard means that the objective is also met.</p>	<p>This change would aim to remove a common point of confusion among applicants, councils and the community, and address a variety of VCAT decisions on this issue.</p>	<p>The proposed review of the relationship between standards and objectives has significant ramifications for planning in Victoria. Amendments to these Clauses should be undertaken in consultation with the planning industry.</p>
40	60	General Provisions	<p>Review General Provisions having regard to the following:</p> <p>a) Consolidate application requirements into a single clause similar to Clause 66 (Referrals and Notice), review all existing requirements, and add common application requirements (such as basic plans) to definitions to reduce duplication of description.</p>	<p>Application requirements are currently listed under permit triggers, making them spread across many different parts of the VPP. In practice, they are not used conscientiously by applicants nor are they routinely required by councils. Because of this they have lost their relevance to many permit processes. They also add to complexity by repeatedly describing typical requirements, such as basic site and context plans. These common requirements could be defined in Clause</p>	<p>Application requirements should correspond to the Planning and Environment Act 1987 / Planning and Environment Regulations 2015.</p>

				<p>72 meaning their contents do not need to be restated under every trigger.</p> <p>Many councils have created their own 'checklists' of application requirements based on different application types, practically making the application requirements in the scheme redundant. In some cases excessive application requirements can cause delays to permit processes and add to the cost of an application. A table form with checkboxes for each requirement under each trigger could be a logical method of presentation. Reviewing and consolidating the application requirements would make the VPP clearer and simpler.</p>	
Urbis Insert	62	Uses, buildings, works, subdivisions and demolition not requiring a permit	None proposed	None proposed	Some exemptions are noted in the zone only. A review of this provision provides opportunity to centralise exemptions.
41	65	Decision Guidelines	<p>Review Decision Guidelines having regard to the following:</p> <p>a) Review all decision guidelines across the VPP and consolidate under Clause 65, similar to Clause 66 Referral and Notice provisions.</p>	A review of the decision guidelines across the scheme, would remove obsolete requirements and add much needed requirements that better reflect policy and practise. This would ensure that all decision guidelines are appropriate and relevant.	The review of decision guidelines should be exhibited for industry feedback.

				<p>There is much repetition within decision guidelines as they are scattered in many locations across the planning system. Clause 65 contains overarching decision guidelines, but more specific guidelines are often found under each permit trigger. In the case of common triggers (use, subdivision and building and works), these guidelines are often repeated under each zone, such as “the drainage of the land” appearing in IN1Z, IN2Z, IN3Z, C1Z, C2Z and PZ. A new checkbox table in Clause 65 with each trigger listed could be a more efficient and simpler method.</p>	
42	66	Referral and Notice Provisions	<p>Review Referral and Notice Provisions having regard to the following:</p> <ul style="list-style-type: none"> a) Remove references to seeking the views and comments of referral authorities throughout the VPP and use formal processes of Clause 66 instead b) Review the classification of referral agencies as ‘recommending’ authorities or ‘determining’ authorities c) Encourage more standard agreements with agencies to reduce the need for referral for minor and low risk matters d) Make the Department of Economic Development, Jobs, Transport and 	<p>This reform seeks to clarify and bring consistency to referrals by limiting them to formal referrals only and moving away from informal referrals. It also seeks to remove unnecessary regulatory burden and streamline the referral process for appropriate application types through greater use of standard agreements.</p>	<p>Support modifications.</p> <p>Referral / notice provisions should be clarified in the Zone and Overlay.</p>

			Resources a referral authority for land near existing quarries.		
DEFINITIONS					
43	72	General Terms	<p>Review General Terms to investigate the inclusion of:</p> <p>a) 'outbuildings normal to a dwelling'</p> <p>b) 'sensitive uses'.</p>	<p>These are terms that are common sources of confusion and dispute. Providing the definitions would bring clarity and make the planning scheme easier to use, as well as improving permit application timeframes.</p>	<p>General terms should be reviewed to provide greater clarity.</p> <p>"Building height" is measured differently from zone to zone; e.g. blanket height in the Residential zones vs middle of the frontage in City of Melbourne DDO60.</p>
NA	73	Outdoor Advertising Terms	None proposed	None proposed	Outdoor advertising terms should be updated to provide greater clarity and reflect contemporary signage design.
44	74	Land Use Terms	<p>Review all VPP land use terms and definitions, and associated treatment in the land use tables, having regard to the following objectives:</p> <p>a) Reduce the number of terms</p> <p>b) Remove obsolete uses</p> <p>c) Separate out common land uses only when necessary to be treated differently in zone tables</p> <p>d) Be less prescriptive by removing overly specific terms</p>	<p>Land use terms are a common source of confusion and dispute, and have not kept pace with changes in businesses and communities. The survey suggested widespread support for a holistic review of land use terms, especially from local government planners.</p> <p>The VPP seeks to categorise how land is used into defined and, at times, very specific terms. Many of the terms are now outdated. In some cases obscure terms are used (tavern) when everyday terms could aid understanding (bar), in other cases very common land uses are not</p>	<p>'Serviced apartment' and 'student accommodation' should be included in land use terms.</p>

		<p>e) Broaden terms and definitions to account for rapidly shifting industries and lifestyles</p> <p>f) Use every day and plain-English terms that the community readily understands</p> <p>g) Modernise definitions including consideration of emerging social, economic and technological trends</p> <p>h) Provide definitions for undefined terms, excluding those where there is an appropriate ordinary dictionary meaning or definition in the Act.</p> <p>Review Land Use Terms to investigate adding the following (only where necessary and in recognition of the objectives above):</p> <p>‘Rural workers accommodation’, ‘Carbon sequestration’, ‘Contractor’s Depot’, ‘Holiday dwelling’, ‘Café’, ‘Music and arts festival’, ‘Maker’, ‘Community gardens’, ‘Storage facility’ and ‘Animal day care’.</p> <p>Review Land Use Terms to investigate <u>revising</u> the following:</p> <p>‘Tavern’, ‘Airport’ and ‘Airfield’, ‘Primary produce sales’, ‘Utility installation’, ‘Minor utility installation’, ‘Place of worship’, ‘Anemometer’, ‘Winery’,</p>	<p>used (café). Where the common term and the planning term depart, this causes uncertainty and confusion among the community and makes it harder for non-professionals to participate in the planning system.</p> <p>In other cases, definitions need updating to reflect shifts in the land use over time.</p> <p>Modernising the land use terms and definitions, and consequential changes to the zone land use tables, would simplify the VPP and improve levels of understanding of the planning system.</p> <p>Please see Proposal 5.1 for more information.</p>	
--	--	---	--	--

			<p>'Shop', 'Food and drink premises', 'Leisure and recreation', 'Animal keeping', 'Brothel', 'Renewable energy facility', 'Heliport', 'Caretakers residence', 'Community market', 'Trash and treasure market', 'Dwelling', 'Cinema based entertainment facility', 'Warehouse', 'Store', 'Gambling premises', 'Gaming premises', 'Convenience restaurant', 'Art and craft centre', 'Art gallery', 'Amusement parlour', 'Pleasure park', 'Retirement village' and 'Residential village', 'Restricted retail facility', 'Group accommodation', 'Industry', 'Medical centre', 'Agriculture', 'Bed and breakfast', 'Night club', 'Hotel', 'Retail', 'Accommodation', , 'Place of assembly', 'Restaurant', 'Earth and energy resources' and 'Stone extraction', 'Materials recycling', and 'Transfer Stations'.</p> <p>Review Land Use Terms to investigate removing terms within the land use table that do not have definitions as is consistent with Clause 71.</p>		
--	--	--	--	--	--

INCORPORATED DOCUMENTS

47	81	Incorporated Documents	Review Incorporated Documents having regard to the following:	Ready access to planning documents is a fundamental principle of a modern planning scheme. Documents should be available freely and accessible online, in	Support the use of Incorporated Documents, or some other process,
----	----	------------------------	---	---	---

			<p>a) Examine whether a standard template can be adopted to ensure consistency across documents</p> <p>b) Address the use of Australian Standards (fee payable for access), moving away from incorporating documents that are not free to access</p> <p>c) Review the usefulness of each incorporated document including whether extracts should be taken from particularly large documents</p> <p>d) Remove obsolete and outdated documents</p> <p>e) Replace document references with updated versions where available.</p>	<p>forms that are readable and capable of 'copy' and 'paste'. Noting the recommendation to implement a Victorian planning library, making all documents free and fully accessible would increase transparency, lead to fewer disputes, and improve confidence in the planning system.</p> <p>Updating the listed incorporated documents with newer versions, and removing outdated documents, would increase the relevance of the VPP.</p>	<p>for dealing approvals of State Significant Projects</p> <p>We support the improved accessibility of these documents.</p>
48	N/A	Practice Notes	<p>Review Planning Practice Notes having regard to the following:</p> <p>a) Repackaging the extent of practice notes to make them easier to navigate. This includes introducing a new VPP manual to support planning authorities (and repositioning appropriate practice notes focused on implementing and writing provisions into the manual)</p> <p>b) Create a new Practice Note addressing advertising sign provisions, in particular outlining a mechanism by which councils can address concerns about the safety impact of signs on or</p>	<p>Repackaging the (now long) list of practice notes would improve readability and accessibility.</p> <p>In recent years, the practise of applying mandatory controls (as opposed to discretionary controls) has shifted following a series of high profile panel reports and planning scheme amendments. Updating the practice note to reflect government policy and to provide clearer guidance would remove a source of common confusion and uncertainty among applicants, councils and the community.</p>	<p>The proposed review of the Planning Practice Note 59 - The Role of Mandatory Provisions in Planning Schemes will have significant impact on planning in Victoria. Whilst the application of mandatory height provisions has increased in recent years, several high profile panel reports have maintained that mandatory height provisions should only be applied in exceptional circumstances (in line with the current planning practice note).</p> <p>In our experience, the application of mandatory provisions can result in</p>

			<p>near state-controlled roads where VicRoads is not a referral authority</p> <p>c) Update Planning Practice Note 59 – The Role of Mandatory Provisions in Planning Schemes - to reflect the circumstances when mandatory provisions should be applied.</p>		<p>overly-uniform outcomes that do not allow for innovative or site responsive designs.</p> <p>We view further investigation into mandatory provisions should be undertaken in consultation with the planning industry and Planning Panels Victoria.</p>
--	--	--	---	--	--



BRISBANE

Level 7, 123 Albert Street
Brisbane QLD 4000
Australia
T +61 7 3007 3800

MELBOURNE

Level 12, 120 Collins Street
Melbourne VIC 3000
Australia
T +61 3 8663 4888

PERTH

Level 14, The Quadrant
1 William Street
Perth WA 6000
Australia
T +61 8 9346 0500

SYDNEY

Level 23, Darling Park Tower 2
201 Sussex Street
Sydney NSW 2000
Australia
T +61 2 8233 9900