Your Ref:

Our Ref:

Smart Planning Program
Department of Environment, Land, Water and Planning
8 Nicholson Street
East Melbourne Vic 3002

1 December, 2017

Dear Sir/Madam,

Re: Reforming the Victoria Planning Provisions – A discussion paper – Wyndham City Council
draft submission

Thank you for the opportunity to make a submission to the Discussion Paper. This draft
submission has been prepared by Council officers. It is proposed to put a report to Council in
January 2018 to seek Council endorsement of the submission. It is disappointing that only six
weeks has been given to lodge submissions given the importance and complexity of the reform
proposals identified in the Discussion Paper. Unfortunately, the one week extension for
submissions was given very late and did not assist us in being able to brief Council.

We have lodged the detailed responses to the specific proposals online. In addition to the
responses to the specific proposals, we make the following additional general comments:

Scope of reform

Council officers agree with the MAV draft submission that there is more scope to reform the VPPs
than that proposed in the Discussion Paper. Further, the MAV’s proposed structure of the VPP,
which potentially provides a more logical and simplified framework, is worthy of further
investigation. It seems to us that the Discussion Paper is being largely used to pursue reforms that
have been previously identified, but not implemented. This is not to say that many of the
recommendations are not welcomed.

There are also other matters that should be considered for reform. One of the more significant
areas of concern with the VPPs is the inconsistent application of performance-based provisions
versus mandatory provisions, particularly in relation to building height controls. The exceptional
circumstances criteria of Planning Practice Note 59: The role of mandatory provisions in planning
schemes to justify mandatory provisions is out-dated and does not reflect the nature of
amendment approvals being made.
It would also be appropriate to review notice and appeal rights in the context of reviewing provisions. For example, proposals that meet mandatory requirements should in principle not be subject to notice.

The success of the planning application process largely depends on the professional and administrative officers involved in decision-making, and the administrative procedures to process applications. Officers need to have the expertise and skills to administer the system, and councils need to have efficient processes in place to ensure streamlined decision-making. Consideration should be given to adding a feature to the Smart Planning reform process on developing an ongoing continuous improvement program that supports councils to achieve best practice outcomes.

**Principles of a modernised VPP**

The MAV draft submission identifies a need for a principle on desired outcomes/criteria to remain focused on core system effectiveness.

Similarly, Council officers consider there should be a principle on Effectiveness – i.e. are the VPPs achieving their intended outcomes and delivering a process meeting stakeholder expectations. While there is a principle on *policy and outcomes focused* (which states that provisions should have a clear policy basis and are planning outcome driven), there is no principle that ensures that DELWP, as the custodian of Victoria’s planning framework, has a systematic process in place to evaluate the effectiveness of the system. It is noted the Auditor-General Report *Managing Victoria’s Planning System for Land Use and Development* (2017) concluded:

*Assessments to inform planning decisions have become more evidence-based since our 2008 audit. However, the assessments we examined still lacked a comprehensive and transparent analysis of all relevant matters required by the Act and the state’s requirements, as set out in the VPP.*

*Consequently, DELWP and the audited councils cannot be assured that their planning assessments are effectively informing planning decisions to deliver the intent of all relevant state planning policies, or that they are leading to sustainable and beneficial outcomes for current and future generations.* (our emphasis)

It would be appropriate for the State Government to consider amending the *Planning and Environment Act 1987* requiring a formal review of the VPP (including state planning policies) every four years similar to the statutory requirement that councils must review their planning schemes every four years.

**VicSmart**

The Discussion Paper includes a number of proposals to embed VicSmart into the VPP. Council’s experience is that few applications are made under VicSmart. Few applicants are aware of it and, as VCAT has determined in *Wittenbach v Cardinia SC* [2017] VCAT 793, it is not the responsibility of councils to advise applicants which process they should lodge applications under.
A weakness of VicSmart is that applicants have an expectation that if the VicSmart criteria is met then a permit should automatically be granted within the statutory 10 day period. However, the VPPs should make it clear that any proposal subject to a planning permit (whether or not it meets the VicSmart criteria) needs to be assessed against all relevant criteria in the planning scheme. It would appear this problem led to the Tribunal finding, in Portland Historic Buildings Restoration Committee Inc v Glenelg SC (Red Dot) [2017] VCAT 519, that the Council did not act reasonably in approving a permit to demolish a fence despite meeting the VicSmart criteria.

It is considered that VicSmart should be removed from the VPP and that the decision-making pathways should be as follows:

- Exempt – no permit required
- Exempt – no permit required provided prescribed criteria has been met (this is where Code-assess process may be appropriate)
- Permit required – with clear decision-making guidelines
- Prohibited

There would also be merit in establishing different statutory timeframes for different types of applications as some other jurisdictions have. For example, 20 days for minor matters; 60 days for intermediate matters; and 90 days for complex matters. It is understood that criteria would need to be developed for the three types of applications, however this is not an insurmountable task (i.e. VicSmart has established criteria, it is noted VCAT has developed criteria for its Major Cases list). Having 10 days for VicSmart applications and 60 days for everything else does not reflect the realities of processing the large range of permit applications in Victoria.

Planning scheme amendments processing

Ministerial Direction 15 was introduced in 2012 to encourage consistent, efficient and timely processing of amendments by setting times for completing key steps in the amendment process.

The City of Wyndham’s experience, and the experience of many other councils, is that the timeframes for the approval of amendments submitted to the Minister is unacceptable. Recently DELWP officers provided an overview of the internal initiatives that have been introduced to improve the processing of amendments, which is welcomed. However, there needs to be greater adherence to meeting the Ministerial Direction 15 timeframes and it is suggested that DELWP publish annual statistics to track performance against the Ministerial Direction timeframes.

Concerns relevant to Growth councils

One of the features of many Precinct Structure Plans (PSPs) is for a proponent to prepare an Urban Design Framework (UDF) for town centres. An UDF normally requires approval by the council, VPA or both. It would be appropriate that to improve transparency of the VPP framework that an approved UDF is explicitly identified in the planning scheme similar to a Development Plan under a Development Plan Overlay.
Implementation

It would appear from the timeline flow chart of Reforming the Victoria Planning Provisions web page that councils and other stakeholders will not be invited to comment on the final reform package that is to be gazetted in mid 2018. Council officers believe that it is critical that a further opportunity is provided to councils and other practitioners on the draft framework and provisions. It would demonstrate genuine involvement in the Smart Planning reform process. As you would be aware, the recent implementation of the residential zones provisions, which were introduced without consultation with councils, has resulted in significant problems to the extent that another amendment needs to be introduced to address the flaws of the new residential zone provisions. Further, the State Government should provide resource assistance to councils for the implementation of any Smart Planning reforms that require significant changes to local planning schemes. It would be appropriate for this matter to be considered in DELWP’s business case to the Government.

An implementation program that includes training should also be developed with reasonable timeframes.