

VICTORIA PLANNING PROVISIONS REFORM

MANNINGHAM CITY COUNCIL RESPONSE

NOVEMBER 2017



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Manningham City Council (Council) is pleased to provide this submission on *Reforming the Victoria Planning Provisions*.

It is understood that the reform is being undertaken to address issues that have been identified with the Victoria Planning Provisions (VPP), including complexity, duplication, delays and uncertainty.

GENERAL COMMENTS

Council is broadly supportive of a reform to the VPP and also supportive of the five proposals identified:

- Proposal 1 – A simpler VPP structure with VicSmart assessment built in
- Proposal 2 – An integrated planning policy framework
- Proposal 3 – Assessment pathways for simple proposals
- Proposal 4 – Smarter planning scheme drafting
- Proposal 5 – Improve specific provisions

In addition, Council is also supportive of the principles identified that constitute a modern planning scheme, being:

- Digital first – the VPP should be accessed through better digital interfaces;
- User focused – the approval process should be more easily understandable;
- Consistent – the structure and format, and way that the VPPs are written, should be consistent across Victoria;
- Proportional – assessment pathways should be proportionate to the risk and size of the application;
- Land use focused – overlapping and conflicting provisions should be avoided to ensure there is a clear focus for land uses; and
- Policy and outcome focused – the VPPs should have a clear policy basis that can achieve good planning outcomes and strategic clarity.

In particular, Council welcomes changes that will remove redundant provisions, remove duplications, update the terms and definitions, and make it clearer and easier to assess planning permit applications.

Importantly, many Councils across Victoria, including Manningham, are in the process of undertaking a review of their respective planning schemes. The Department of Environment, Land, Water and Planning (DELWP) needs to be aware that any changes to the structure and operation of the Victoria Planning Provisions are likely to have implications on a Council's response or list of recommendations outlined as part of the planning scheme review process. Likewise, recommendations of a planning scheme review may have implications on the proposed reforms outlined *Reforming the Victoria Planning Provisions Discussion Paper (2017)*.

It is recommended that all Councils are given an opportunity to 'road test' any proposed changes to the Victoria Planning Provisions to evaluate their strengths and weaknesses.

SPECIFIC COMMENTS AND/OR CHANGES

Proposal 1 – A simpler VPP structure with VicSmart assessment built in

- The restructure of the particular provisions is supported, however it is important that the intent and direction of the existing particular provisions are not lost, including but not limited to, ResCode (Clauses 54-56) and Apartment Developments (Clause 58).
- Incorporating Clause 57 into the existing VPP zones is supported, however the requirements need to be rationalised to provide greater clarity and minimise inconsistencies. It is noted that presently there is a conflict between the Table of Uses section in Clause 57 and the Rural Conservation Zone (Clause 35.06) as it relates to restaurant.
- The inclusion of interface provisions is welcomed. It is often difficult for planners to ensure that relevant legislation (other than the *Planning & Environment Act 1987*) is appropriately considered when assessing planning permit applications, particularly when there is no obvious VPP, such as an overlay, to ensure that the legislation is to be considered. An example of this is the *Aboriginal Heritage Act 2006*, which may affect some development applications. Without an overlay, planners rely on internal GIS mapping to determine if the requirements of the *Aboriginal Heritage Act 2006* are applicable. This is an unreliable process.
- Consideration should, however, be given to using a different title to ‘Interface provisions’ as interface can also refer to the relationship between built form and this may lead to confusion.
- The relocation of VicSmart requirements into the particular provisions is considered appropriate and it is agreed that this will emphasise simple assessment pathways.
- The consolidation of all administrative provisions into the general provisions section is also supported.
- While the intent of VicSmart is acknowledged, the current structure is not easily understandable. With its relocation to the particular provisions, the structure of the content should be reviewed to ensure it is easier to understand.
- Also with respect to VicSmart, it is not clear why references will only be made to VicSmart in the particular provisions and overlay schedules, and not in other provisions such as zone schedules.
- An online assessment of whether an application meets VicSmart requirements would simplify and streamline assessment processes.
- It is agreed that a realistic work program and timeframe would be required to draft, translate and test the new restructured provisions.

What other changes to the VPP structure do you think should be considered?

- To assist with usability and transparency, it is also recommended that information relating to mandatory conditions and exemptions in the zones, overlays and particular provisions, could be relocated into a ‘one stop shop’ provision elsewhere in the VPPs. While this may not be achievable as part of this process, due to pre-determined timeframes, this would be an improvement to the VPP in the future. As an example, if this were to occur, it would allow planners to assess a large number of exemptions and requirements in one place. This would likely be suited to the general provisions, and the clause could then be referenced in the zones, overlays and particular provisions. A similar style of improvement is detailed on page 52 of Appendix 2, whereby the Table of exemptions in environmental and landscape overlays is proposed to be relocated to Clause 62.02-3.

- Clause 61 currently relates to the administration of each Victorian planning scheme. The content of the clause is considered to be more suitable 'up front', i.e. before Clause 10.
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Proposal 2 – An integrated planning policy framework

- In general, the integration of the State Planning Policy Framework (SPPF) and the Local Planning Policy Framework (LPPF) into a Planning Policy Framework (PPF) is supported, particularly if it removes outdated provisions and policy content.
- Council previously commented on a proposed PPF to the State Planning Policy Framework Advisory Committee in May 2014. In that submission, Council noted its concern with regard to the 'regional' layer of policy, in that it would affect the PPFs workability and could potentially undermine the role and effectiveness of local policy. This is still of concern for Council. rationale for the concern was as follows:
 - The role and responsibility of regional policy was not clear;
 - The *Planning and Environment Act 1987* clearly identifies that, in the event of conflict, the State provisions must prevail over local provisions. It is not clear how that would work, or indeed whether a hierarchy could or should apply in relation to all the different types of regional policies proposed; and
 - Irrelevant regional policies may be applied to some councils.

In relation to the above, it is important that the role, responsibility and weight of regional policy is clear and supported in relevant legislation.

- Local government has, in the past, led the way in relation to policy development. For example the recently gazetted Environmentally Sustainable Development Policy was developed by a number of councils in order to address a clear policy gap. If in the future, policies are proposed to be introduced at either a regional or local level, and where there is no State policy, it is not clear how that would work in the proposed hierarchy. A further example of this is food security, which is not currently addressed by State planning policies.
- It is imperative that the content of Manningham's local planning policies and, more specifically, the 'place-based' local planning policies such as the Bulleen Gateway Policy, are included in the new PPF format.
- As long as the local planning policies are redistributed appropriately into the PPF, the simplification of the Municipal Strategic Statement (MSS) into municipal context and vision is supported.
- Local planning policies may not easily fit under an existing theme, but may still be relevant and important. In these instances, it may warrant miscellaneous policies being included at the end of the PPF, as long as councils can demonstrate why it's appropriate and essential that they be included.
- The clause numbering of the three levels of policy will need to be considered carefully to ensure that the hierarchy of policy is clear.
- The proposed composition of a PPF policy is supported, however it is important that reference documents are also included within this composition.
- Setting new rules and guidelines for writing policy will ensure a consistent format and terminology, and will remove contradictory and duplications provisions, and are therefore supported.

- While it is acknowledged that the intent is to create a framework that is easier to understand, it is important to note that multiple themes will still need to be reviewed when assessing planning permit applications. As an example, with respect to an application in the Green Wedge, in addition to being considered under the proposed Clause 11.04-4 *Green wedges*, it would also need to be considered against a number of other clauses in the PPF such as Clause 12.01 *Biodiversity*, Clause 12.05 *Significant environments and landscapes* and Clause 14.01 *Agriculture*. While this may be obvious, it is important to acknowledge that many applications will be assessed against multiple themes and may not be as streamlined as anticipated.
- The suitability of the proposed Clause 15.01-3 *Design for rural areas* sitting under Clause 15.01 *Urban environment* is questioned.

Are there any themes that should be added to the proposed PPF thematic framework — shown in Appendix 1 — to ensure that it covers all required policies?

- Council has reviewed its local planning policies to determine how they would fit within the PPF. Three current local planning policies are not easily transferrable to the proposed PPF format. These include:
 - Clause 22.17 *Eastern Golf Course Key Redevelopment Site Policy* – this policy may no longer be required given the progress of development on the site.
 - Clause 22.18 *Gaming* – this issue is not adequately addressed in the proposed PPF.
 - Clause 22.19 *Outbuildings In The Low Density Residential Zone* – this may be suitable under Clause 15.01 *Urban environment*.
- Of the above themes, it is considered that community health/ gaming is lacking from the proposed PPF. In addition, food security should also be included.

What else could be done to make planning policy easier to apply and understand?

- No responses are provided in relation to this question.

What will be needed to support transition to a new PPF format?

- The resource implications associated with transitioning to a PPF will be considerable for Council. It is understood that the amendment to introduce the proposed PPF changes will be finalised by mid-2018. The relevant work plan for the 2017-2018 financial year has already been determined and, as such, it will be challenging for Council to draft and transition the provisions without additional funding and resourcing.
- If support is provided from DELWP to assist with preparing the new PPF format, it is essential that Council is the determining organisation about the retention, transition and location of content

Proposal 3 – Assessment pathways for simple proposals

- VicSmart and code-based assessments are supported in instances where there is a low risk and the uses are completely in accordance with the purpose and objectives of the zone and overlays.
- It is assumed that VicSmart and code-based assessments will be structured differently, and both contained within the particular provisions.

- While the merits of code-based assessments are apparent, there are still some challenges that Council officers will encounter when assessing these applications. For example, planning permit applications under a code-based assessment may still need to be referred to internal Council departments for technical advice. By the time the application is lodged and registered, it is unlikely that Council officers would be able to issue a planning permit within 10 days. Council recommends a more realistic timeframe of 15 business days to assess planning permit applications under a code-based assessment.
- Further to this, the application requirements under a code-based assessment need to be very clear and detailed. If insufficient information is provided with a code-based assessment request, this request cannot be considered within the required timeframe.
- In relation to a secondary dwelling or ‘granny flat’ being included in code-based assessments, careful consideration needs to be given to the conditions for this to be assessed. As proposed in the Discussion Paper, secondary dwelling or granny flat standards could apply to residentially zoned land. This could therefore apply to the Low Density Residential Zone, which is located in Manningham’s Green Wedge. In these instances, it is important that Council continues to have the ability to assess the design and siting of secondary dwellings and granny flats.
- Under the *Discussion* on page 26, it is noted that a code-based assessment would always result in a permit subject to standard conditions, provided that the code requirements are shown to be met. Code-based assessments being structured in this manner is considered appropriate.

What other matters do you think are suitable for code-based assessment?

- Certain classes of applications that are currently located under the VicSmart assessment pathway may be suitable for a code-based assessment, including advertising signs, minor vegetation removal and fencing.

Proposal 4 – Smarter planning scheme drafting

- A new VPP user manual and a dedicated business unit dedicated to VPP and planning scheme amendment drafting is supported. As noted earlier, consistent and long-term funding and resourcing is critical to the success of all of the proposed reforms, including Proposals 4.1, 4.2 and 4.3.
- One of the principles of the VPP reform is related to ‘digital first’. Hyperlinking terms, definitions and positions in the nesting diagrams, should be investigated to improve usability.
- Ideally, at a later time when online tools are more advanced, it would be advantageous to have an online system where a land use and/ or development could be entered in relation to a specific property and the relevant requirements were automatically generated. Although this may be unrealistic in the foreseeable future, it is an action that should be investigated and worked towards.
- Council acknowledges that reference documents in the Manningham Planning Scheme need to be reviewed and, subject to their current or ongoing relevance, further rationalised. This will form part of Council’s Planning Scheme Review that is currently underway.

- The following business rules, as articulated on page 32 in the Discussion Paper, are considered appropriate for inclusion in the VPP user manual:
 - Permit triggers are clearly and objectively expressed.
 - Provisions are clearly and consistently applied.
 - Local provisions are clearly and consistently drafted and structured.
 - Performance standards are clearly articulated.
 - The structure and drafting of provisions are optimised for processing and access via digital platforms.
- As a result of this reform, it is noted that the suite of Planning Practice Notes will also have to be updated and should also be integrated into the PSIMS online amendment system.

What are the key matters you think a VPP user manual should include?

- Guidance should be included on the relationship between objectives, strategies and decision guidelines. Statutory planners, at different times, provide a different level of consideration and weight to objectives, strategies and decision guidelines when assessing planning permit applications. Direction on the relationship between these assessment guidelines would improve consistency and decision-making.
- Greater consideration and consistency is still needed when using and applying the terms ‘should’ and ‘must’.

What planning documents or information do you think should be included in a Victorian planning library?

- The nominated documents to be included in a Victorian planning library are supported, including incorporated documents, approved development plans, background/ reference documents, historic planning documents and heritage citations.

Are there other ways the drafting and consistency of planning scheme provisions could be improved?

- In order to make provisions more easily understandable, it is important that one idea or requirement is included per dot point and that clear and simple language is used.
- It is important that information contained within provisions is themed and grouped appropriately. As an example, decision guidelines should be in a logical sequence and grouped according to a theme. For example, decision guidelines relating to amenity should always be grouped together and decision guidelines relating to access should always be grouped together.
- To minimise confusion and ensure that requirements are clear, all nominated land uses in the VPPs should have associated car parking rates.
- The current structure of zones, overlays and particular provisions provides information about when planning permits are required for use, development and subdivision. The structure could be improved to be less ‘technical’ and easier to interpret. In any provision that provides a planning permit trigger, an easy to understand question and answer format would improve readability and usability. In these provisions, clearly stating questions such as ‘When is a planning permit required’ and ‘Why is a planning permit required’ would make the requirements more obvious.
- The following ideas are provided to improve the usability of the General Residential Zone (GRZ):

- Under Clause 32.08-5, the first dot point should read '*A lot of less than 300 square metres, or*'
- Under Schedule 1 to the GRZ (Clause 1), where it is questioned if a permit is required to construct one dwelling on a lot of between 300 square metres and 500 square metres, the options available for responding to this should be 'Yes' or 'No'. Specifying an area (e.g. 500 square metres) as a response to this question creates confusion.

The above dot points are provided as examples and all provisions should be improved where minor anomalies have been identified.

Proposal 5 – Improve specific provisions

- As acknowledged in the Discussion Paper, reforming the VPPs will require significant effort from both DELWP and councils.
- It is acknowledged that there are benefits associated with improving specific provisions, such as reducing planning permit requirements, introducing more exemptions, and faster processing times.
- It is essential that good planning outcomes are not compromised by the VPP reforms. Careful drafting of the provisions is therefore needed to ensure that a planning framework is created that is appropriate for the City of Manningham.
- Improving the definitions and terminology is necessary and the inclusion of outbuildings and cafes is supported. Inclusion of the term 'Hairdresser' and 'Bar' would also be of benefit.
- With respect to terms and definitions, further clarity should be provided to assist with categorising a land use. For example, there is often confusion about whether a land use is a restaurant, café or food and drinks premise. To assist with clarity, specifying what is not included in these uses in Clause, which could be either 'exclusions' or 'exemptions', may increase the understanding of the terms and definitions.
- With respect to licensed premises and related VPP changes, Council reserves the right to provide further comments on any content and conditions that are drafted for code-based assessments for small cafes/restaurants and for a modified Clause 52.27.

Any specific comments in relation to Appendix 2?

- Page 47 – Renaming the industrial zones from being numerical to being descriptive is supported.
- Further to this, the similar abbreviations for the Residential Growth Zone (RGZ) and the GRZ still cause confusion amongst our community. Consideration should be given to alternative abbreviations.
- Page 47 – The Activity Centre Zone (ACZ) and associated schedule are important tools within the Manningham Planning Scheme. Not only do the tools provide targeted guidance for Doncaster Hill and its precincts, but the tools also provide a clear message to our community about the role and status of Doncaster Hill. The ACZ also has a direct relationship with *Plan Melbourne 2017-2050*, as activity centres are identified and promoted as places for growth and development. To this end, it is important that the ACZ be retained.
- Page 49 – In relation to Clause 35 (all rural zones), removing the need for a building and works permit for a dwelling extension or associated outbuilding (by removing the floor area

restriction) is not supported. Council receives many applications for extensions and outbuildings in its rural zones, many of which are excessively large and inappropriately designed and sited for the rural areas. In addition, there is concern that without a permit requirement, a dwelling extension or outbuilding could be used as a second dwelling (which is not permissible under the rural zones). A dwelling is defined as including a kitchen sink, food preparation facilities, a bath or shower, and a closet pan and wash basin, and this could easily be accommodated within a dwelling extension or an outbuilding. It is important that Council continues to have the ability to assess these applications.

- Pages 50 – A review of the role and function of Urban Floodway zone and the suitability of replacing the zone with a flood overlay is generally supported provided it provides greater clarity and reduces duplicate controls.
 - Page 53 – Under Heritage Overlay, modification c), new permit exemptions are proposed for minor buildings and works. This could be problematic if the elements that are identified as significant in the associated heritage citation are now categorised as permit exempt. An option that should be considered is only exempting minor buildings and works where they are not recognised as significant in the associated heritage citation.
 - Page 55 – Under Special Building Overlay, modification f), VicSmart should be considered for applications where finished floor level conditions have been met.
 - Page 57 – In relation to Clause 52.06, providing an exemption from car parking requirements in selected zones (commercial zones, Mixed Use Zone, and industrial zones) for existing buildings where floor area is not increased (such as change of use applications) is not supported. In many instances, changing a Section 1 use to another Section 1 use may still increase the demand and need for car parking. Car parking assessments in these situations are still considered necessary.
 - Page 62 – Ensuring that Clause 57 *Metropolitan Green Wedge Land* is more transparent and integrated appropriately is encouraged and supported. However, it is important that requirements are integrated into all zones that affect Green Wedge land. For example, any provisions would also need to be reflected in the Rural Conservation Zone.
 - Page 68 – It is acknowledged that online access should be improved and will be more desirable in the future, however, it is likely that hard copy documents will still be required by some community members. In relation to planning schemes, a copy must be available in accordance with s42 of the *Planning & Environment Act 1987*. As online preferences change over time, direction and/ or legislative changes may be required if hard-copy planning schemes are no longer required to be made available.
 - Page 68 – Any drafting of a standard s173 agreement template should be carefully undertaken. Further, Council would like to review any draft standard agreement and provide comments to provide an understanding of the implications from a local government perspective.
 - Page 68 – Potentially including a provision in local schedules that requires the preparation of s173 agreements is an important element that should be retained. Section 173 agreements can guarantee certain outcomes for councils, and if written appropriately, do not preclude planning permits being granted prior to a s173 agreement being executed.
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CONCLUSION

Council appreciates the opportunity to provide feedback on this important matter and strongly supports a reform to the VPP that will improve planning permit application processes, will make the planning system more efficient and streamlined and will provide greater certainty and usability for planners and the community alike.

The comments and changes included within this submission are intended to further improve the VPPs and ensure that the VPPs are relevant and usable in our local government context.