New Residential Zones Discussion Paper – Property Council of Australia Submission

Thank you for the opportunity to contribute to the New Residential Zones for Victoria – A Discussion Paper as part of the Government’s commitment to review the current residential zones identified in Making Local Policy Stronger.

Our comments are of an overarching nature, based on feedback obtained from the structure of the discussion paper and the information session stating that the Government has taken a broad approach to the development of the three new zones. Our submission will still address key aspects such as the detail of the new zones and their implementation. We recognize that these matters will be further discussed as part of a more lengthy consultation process at a later stage.

The Property Council’s membership comprises property investment companies, builders and developers, property financers and a diverse range of companies with experts that provide advice to organizations in the property development industry. In relation to planning and residential development the new residential zones will impact on the majority of our members and the implementation of the new zones in line with Melbourne 2030 is central to our feedback.

The intent of the changes to the current residential zones to more directly reflect the objectives of State and local planning policies is supported by the Property Council. However, more information is required before the Property Council can form a more definitive view on the zones and our feedback is to be considered in this light.

The Property Council shares the views of the Making Local Policy Stronger document which found that after 10 years, the planning system in Victoria has become complex and confusing and change was required to deliver clarity and certainty to the planning system.
The number one recommendation of this review was to “revise the zones, overlays and particular provisions to provide more opportunity to express state and local policy outcomes.” The review of the residential zones was identified as the first step in this process.

Three new residential zones have been proposed to replace the current residential zones 1, 2 and 3.

**Substantial change zone** – designed to promote a significant increase in new dwellings, greater housing diversity and new built form and character.

**Incremental change zone** – designed to respect the existing neighbourhood character and provide for an increase in housing diversity with a moderate increase in new dwellings.

**Limited change zone** – designed to recognize the specific characteristics to be protected and provides for limited opportunity for increased housing.

From a marketing perspective, the proposed new zones have the potential to impact on property markets and in particular valuations. The Property Council is concerned that the terms substantial, incremental and limited when referring to development could negatively impact valuations and be problematic. For example, a house located in a limited change area may be perceived to have a lower value due to its likely ineligibility for substantial change or renovations, while houses zoned in a substantial change zone are likely to benefit from a “windfall gain” through the zoning definition.

**Key elements of the new residential zones**

The proposed new zones have been designed to:

- Keep single dwelling approvals in the building permit system as much as possible;
- Reduce the need for separate overlay controls;
- Enable councils to vary the standard zone requirement to suit a variety of local circumstances; and
- Streamline the approval of developments that clearly meet the purposes of the zone and meet set criteria.

All applications for one or more than one dwelling on a lot are:

- Exempt from notice and review at VCAT if the development meets the specific ResCode standards; and
- Otherwise, notice and review at VCAT is limited to adjoining and opposite properties if the development proposes a variation to a ResCode standard.

The discussion paper outlines that other uses and development would need to meet the notice and review requirements as they currently apply.

While the outline of the proposed new zones is currently quite broad, the Property Council supports the thrust of the key elements identified and is waiting for further consultation on implementation and application of the new residential zones before forming a more definitive opinion. While implementation is not discussed in the discussion paper, the Property Council has outlined a number of concerns around implementation later in our submission.

**Fast tracking the planning process**

One of the key recommendations in the discussion paper is the reduction in the need for permits. This has the potential to speed up the planning application process and is a concept supported by the Property Council.

As part of the proposed changes all three zones outlined in the discussion paper have provisions to fast track the approval process for what is described as ‘straight forward’ applications. The concept of fast tracking developments identified as ‘straight forward’ is supported by the Property Council; again, it is the detail that is lacking in the discussion paper that is proving problematic. The discussion paper is not clear on its definition of ‘straight forward’ development and how this definition would be applied.

The Property Council recommends that guidelines are established up front by the State Government so that the definition of ‘straight forward’ is clearly defined and that this definition is not left to the discretion of individual councils. This is fundamental to ensure that the new residential zones are clearly aligned with State government policy, particularly Melbourne 2030.

If the definition of ‘straight forward’ is left to the discretion of each individual council this will lead to greater inconsistencies in planning frameworks throughout the State. This is not conducive to creating a planning system that will deliver clarity and certainty and has the potential to create further complexities to the planning system. The adoption of development tracks with clear frameworks for assessment against standard objective criteria is a policy principle which would suitably allow for a “fast track” system to take place.

**Controls, exemptions and overlays**

The discussion paper does not provide enough detail on the wording of the controls in each zone, particularly, the lack of definition of what will constitute a non-residential use nor the process of how the zones will be introduced and ultimately amended to reflect local conditions.

The new zones also have provisions for the exemption from notification and review at VCAT which is supported as proposed by the Property Council but standards need to be measurable as opposed to subjective as is currently the case when looking at the neighbourhood character standards. In order for the exemption from notification provision to work, the Property Council recommends that this exemption should also be extended to include any new schedules if they are included in a residential zone.

The ability to introduce multiple schedules will need to be fully justified and subject to a full planning scheme amendment process. While the intent may be sound there is the possibility it will increase the complexity of planning schemes and therefore move away from the original intentions of Making Local Policy Stronger. The matters able to be incorporated into a schedule should be strictly controlled and enforced. For the introduction of multiple schedules to be successful the inclusion of a schedule must enable applications to be fast tracked and be exempt from notice and review at VCAT.

The Property Council has identified that the introduction of multiple schedules could further complicate the planning system and that multiple schedules will change the intent of the residential zone implemented. It needs to be clear that schedules are not designed to mask the intent of the zone.

**Implementation – Residential 2 versus Substantial Change Zone**

The Property Council believes that the proposed zones, as they have been outlined in the discussion paper, do not differ greatly from the residential zones in the current planning system. For example, the substantial change zone,
which, if applied, would contribute significantly to the implementation of *Melbourne 2030* is described in the discussion paper as being similar to the current Residential 2 Zone.

The Residential 2 Zone is designed to encourage medium to high density residential development. This zone is currently not being implemented by inner suburban councils and therefore not contributing to the implementation of *Melbourne 2030*. There is no discussion about how the proposed substantial change zone will improve implementation practices in this zone and therefore how will it prove to be different to the current system where the Residential 2 Zone has only been implemented in Frankston and Dandenong.

Recognition of the need for new measures to identify inner suburban areas for greater density is supported by the Property Council and reflects the concepts outlined in *Melbourne 2030* to promote development within activity centres.

Factors that need to be considered by the Government regarding implementation include:

- Whether the land around activity centres is already zoned residential and the substantial change zone can therefore be applied;
- Responsibility for identifying where the zones will be applied; and
- Consideration of the new zones, particularly the substantial change zone, cannot be in isolation from the current planning scheme.

Further, the Property Council is concerned that councils that have historically been anti-infill development in line with *Melbourne 2030* will take the opportunity to introduce the Limited Change Zone as the predominant residential zone in the council area, forcing developers to justify at great lengths the needs for substantial change.

The Property Council recommends that consideration be given to standardizing the Incremental Change Zone as the default residential zone, similar to how the current residential 1 zone is applied. This appears to be a middle ground approach that has the ability to alleviate concerns raised by the Property Council that councils will have a tendency to gravitate toward the Limited Change Zone as the default zone and therefore creating limited opportunity to increase housing density.

Further, the Property Council recommends that areas are to be identified in municipalities by the State Government where the Substantial Change Zone would be applicable and councils should be required to justify why this zone is not appropriate for the identified area.

Local councils should be required to clearly identify why an area within their municipality should be classified as a Limited Change Zone particularly in areas that have been identified in State Government policy as ideal for greater infill development. Councils applying for Limited Change areas should be required to identify these areas using an objective and quantifiable set of criteria which will need to be measured against the government identified density demands. The Property Council believes the application of this zone needs to be clearly articulated to ensure that the following factors are clearly defined:

- Areas of special neighbourhood character;
- Vegetation;
- Environmental or landscape significance;
- Limited infrastructure capacity; and,
- Areas remote from public services and transport.
The application of any new suite of residential zones must be predicated on demonstrating that the zones and schedules will in both their construction and application, deliver on State and local government policy. The Property Council recommends that councils are not given the responsibility to selectively apply the new residential zones and that the zones must be seen as a package for each municipality. The implementation of any new residential zone needs to be in the context of an overall housing strategy and implementation approach.

For the proposed new zones to be implemented effectively, the State Government will need to take a strong leadership position on their implementation. Based on the current application of the Residential 2 Zone, local councils will not willingly identify areas to be designated substantial change zone, and government leadership and direction will be essential.

**Proposed new zones and transparency – Adaptation of the DAF Leading Practice Model**

The application of the new residential zones and the potential to fast track the planning process through the removal of third party appeals and exemption from notice and review at VCAT if the development meets specified ResCode standards has attracted some negative attention. While the Property Council supports mechanisms to fast track the planning process and agrees that if a planning application meets the relevant standards exemptions should be provided, the adaptation of the key recommendations from the Development Assessment Forum leading practice model (DAF) will assist in increasing accountability and transparency.

The adaptation of DAF, and in particular the recommendation for councils to have independent panels of experts consider planning applications will assist the Government to ensure that applications meet the State and local policy outcomes. This will free up councillors time to develop strategic planning policy for each municipality and allow applications to be assessed against this policy creating a more independent and accountable process for development applications.

A summary of the DAF key recommendations are:

1. **Effective Policy Development**
   - Elected representatives should be responsible for preparing planning policies
   - Policies should be developed through effective consultation with the community, professional officers and relevant experts.

2. **Objective Rules and Tests**
   - Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions.

3. **Built-In improvements Mechanisms**
   - Each jurisdiction should systematically and actively review its policies and objective rules and test to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.

4. **Track based Assessment**
   - Development applications should be streamed into one of six standard assessment ‘tracks’ that corresponds with the level of assessment required to make an appropriately informed decision.
   - These tracks cover the following development types:
     - Exempt;
     - Prohibited;
     - Self assess;
     - Code assess;
5. A Single Point of Assessment

- Only one body should assess an application, using consistent policy and objective rules and tests.
- Referrals should be limited only to those agencies with a statutory role relevant to the application and should be for advice only.
- A referral authority should only be able to give direction where this avoids the need for a separate approval process. To do so, they should be required to specify their requirements in advance and should comply with clear response times.

6. Notification

- Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.
- Such participation should follow clearly defined processes.

7. Private Sector Involvement

- Private sector experts relieve pressure on local governments and help to speed up the development assessment process.
- Private sector experts should have a role in development assessment, particularly in:
  - Undertaking pre-lodgement certification of applications to improve the quality of applications;
  - Providing expert advice to applicants and decision makers;
  - Certifying compliance where the objective rules and tests are clear and essentially technical; and
  - Making decisions under delegation.

8. Professional Determination for Most Applications

- Most development applications should be assessed and determined by professional local government staff.
- Where staff are unable to make a determination, due to the complexity of an application, an expert panel should make the decision.
- Such panels should have an independent chairman and elected officials should constitute no more than 50% of their membership.
- Ministers should still retain call-in powers for applications of state or territory significance, provided criteria are documented and known in advance.

9. Applicant Appeals

- An applicant should always be able to seek a review of a discretionary decision.
- Such a review should only be conducted against the same policies and objective rules and tests as were used in the first assessment.

10. Third-Party Appeals

- There should be no opportunity for third-party appeals unless the decision has clearly departed from planning policy.

The adaptation of the DAF leading practice model as part of the review of residential zones would assist the Government in meeting its objectives of ensuring planning and development applications are assessed in the context of government policy and strategies, in particular, Melbourne 2030.
Conclusion

The *New Residential Zones Discussion Paper* provides a broad framework for government and industry to commence working on a new planning scheme for Victoria that can be more clearly aligned with State and local government policy. As they currently stand, the proposed new residential zones (Substantial, Incremental and Limited Change Zones) need to be further developed with a greater focus on how the new residential zones will be implemented.

The Property Council views this as an opportunity for the Government to implement a new suite of zones, not dissimilar to our current system, which can be better aligned with Government policy, particularly *Melbourne 2030*.

The Property Council also wants to ensure that any changes to the residential zones do not further complicate the planning system and that there is an incentive for zones to be equitably applied.

The Property Council has some reservations about the proposed changes and whether it will create a further drain on ‘planning’ resources and a diversion from other key planning reforms.

The intent of the proposed changes is, however, broadly supported by the Property Council and we support any move by the Government to streamline the planning system. However, more information is required about the proposed residential zones and how they will be implemented before the Property Council can form a more definitive view of the new residential zones.

The Property Council would be pleased to meet with the Department of Planning and Community Development to discuss details in this submission, or other issues related to the development of new residential zones.

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