

# Submission

on the

## Reformed Zones for Victoria

prepared by

**Environment Defenders Office (Victoria) Ltd**

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## **About the Environment Defenders Office (Victoria) Ltd**

The Environment Defenders Office (Victoria) Ltd (**EDO**) is a Community Legal Centre specialising in public interest environmental law. Our mission is to support, empower and advocate for individuals and groups in Victoria who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment and support this vision through the provision of information, advocacy and advice. In addition to Victorian-based activities, the EDO is a member of a national network of EDOs working to protect Australia's environment through environmental law.

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Submitted through online form on Department of Planning and Community Development website, at <http://www.dpcd.vic.gov.au/planning/theplanningsystem/improving-the-system/new-zones-for-victoria>

# Summary of Recommendations

The EDO recommends:

## **Rural Zones**

- The proposed reforms to the Green Wedge, Green Wedge A and Rural Conservation Zones represent yet another attack on green wedges, and should be abandoned entirely.
- The minimum lot size in the Rural Living Zone should be maintained at 8 ha.
- That 'industry' not be included as a permitted use in the Farming Zone.
- That environment and biodiversity protection remain in the purposes of the Farming Zone.

## **Residential Zones**

- The process for allocating new residential zones to particular areas must allow for genuine community participation, and be accompanied by an environmental justice assessment.

# Introduction

The EDO is pleased to be able to make a submission on the proposed Reformed Zones for Victoria.

We make our submission based on over 20 years of experience practising public interest environmental law, advising and acting for members of the community in planning matters for free or at low cost, to help them get the best environmental outcomes out of the planning system. Our focus is therefore on the proposed reformed rural and residential zones.

Whilst some of these reforms are sensible and have the potential to effect useful changes to our planning system, we have reservations about the potential for the residential zone reforms to reinforce and extend environmental injustice, and are deeply concerned at moves to undermine environment protection in rural areas and launch yet another attack on green wedges.

## Rural Zones

The EDO has some serious concerns about the proposed changes to rural zones.

### ***Attack on Green Wedges***

Despite the opaque language used in the discussion paper and factsheets, the proposed reformed rural zones reveal some major changes to the Green Wedge, Green Wedge A and Rural Conservation Zones, to allow significantly more development in these areas.

Notably, the changes to the Green Wedge and Green Wedge A Zones include:

- allowing 'agriculture' without the need for a planning permit;<sup>1</sup>
- allowing 'rural industry' without the need for a planning permit;<sup>2</sup>
- allowing abattoirs, sawmills, schools, medical centres and places of assembly, with a permit;
- allowing function centres, group accommodation, residential buildings, and restaurants with a permit, but without any of the old conditions (including the 40 ha minimum lot size);<sup>3</sup> and
- removing the prohibition on service stations.

These changes go beyond the minor increase in development (i.e. schools and medical centres) flagged in public announcements, and allow some fairly heavy industry into Green Wedges.

These changes unacceptably undermine the integrity of the green wedge zones. They abandon the two key pillars of these green wedge zones — the 40 ha minimum lot size, and the requirement that development be linked with agriculture or other 'green' uses. When combined with the incursions made into green wedges made in the recent expansion of the Urban Growth Boundary, they represent a wholesale attack on Victoria's green wedges.

These changes are sharply at odds with Sir Rupert Hamer's vision of the green wedges as 'Melbourne's lungs'. They are also at odds with the findings of the Environment Design and Public

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<sup>1</sup> Defined at length in cl 74 of the Victoria Planning Provisions.

<sup>2</sup> Defined as "land used to (a) handle, treat, process, or pack agricultural produce; or (b) service or repair plant, or equipment, used in agriculture" in cl 74 of the Victoria Planning Provisions.

<sup>3</sup> These conditions required that they be used in conjunction with agriculture, outdoor recreation, rural industry or a winery, and that they not exceed certain caps on size. They have now been deleted.

Health Inquiry, which released a bipartisan report emphasising the importance of green wedges and open spaces not just to the environment, but to the physical and mental health of Victorians.<sup>4</sup>

#### **Recommendation**

- The proposed reforms to the Green Wedge, Green Wedge A and Rural Conservation Zones represent yet another attack on green wedges, and should be abandoned entirely.

#### ***Increased native vegetation clearance***

The proposed reformed Rural Living Zone reduces the minimum lot size for dwellings and subdivisions from 8 ha to 2 ha. This is likely to allow for the construction of more new dwellings in this zone, which is in turn likely to facilitate the clearance of more native vegetation due to the various provisions in the planning scheme which allow (and in some cases require) native vegetation clearance around dwellings.<sup>5</sup>

#### **Recommendation**

- The minimum lot size in the Rural Living Zone should be maintained at 8 ha.

#### ***Industrialised Farming Zones***

The proposed reformed Farming Zone allows for much more heavy non-agricultural industry. These new permitted uses could change the rural character of the zones, and cause much more pollution.

Under the proposed reforms, the following uses are permitted with council approval:

- industry (broadly defined to include manufacturing, waste treatment and disposal, and the dismantling or breaking up of any article);
- accommodation (even if not linked to agriculture); and
- sawmills, abattoirs and warehouses.

These uses could cause significantly more pollution, and new kinds of pollution — particularly the admission of waste treatment and disposal facilities. When combined with the removal of the clause, 'to protect and enhance natural resources and the biodiversity of the area' from the purposes section, these changes undermine the protection of the rural environment and pose a threat to the rural character of the Farming Zone.

#### **Recommendation**

- That 'industry' not be included as a permitted use in the Farming Zone.
- That environment and biodiversity protection remain in the purposes of the Farming Zone.

<sup>4</sup> Legislative Council Environment and Planning Committee, *Environmental Design and Public Health in Victoria* (2012) available here: <http://www.parliament.vic.gov.au/committees/legislative-council-committees/standing-committee-on-environment-and-planning/article/1521>.

<sup>5</sup> See, for example, Victoria Planning Provisions cl 52.17 'fire protection' exemptions which allow the removal of a tree overhanging a dwelling, or for the making of a fuel break, or if a fire prevention notice has been served by CFA; cl 52.17 'personal use' exemption, for the owner or occupier of land to obtain a 'reasonable amounts of wood for personal use'; cl 52.47 requires a 'defendable space' be cleared of vegetation around dwellings in a Bushfire Management Overlay.

# Residential Zones

The proposed reformed residential zones include three new zones:

- *General Residential*: for most residential areas, to allow modest growth;
- *Residential Growth Zone*: for 'appropriate locations near activity areas', to allow more growth and medium-density housing;
- *Neighbourhood Residential Zone*: for 'areas of recognised neighbourhood character, environmental or landscape significance' where single dwellings prevail, to restrict growth and preserve lower-density housing.

We support the creation of these new zones. It makes sense to identify some areas for growth and others for preservation, to allow specialisation and create areas that cater for different tastes and purposes.

However, the way that these zones will be allocated to particular areas is potentially fraught. There is the potential for serious inequity to arise if these zones are used to reinforce existing pockets of advantage and disadvantage in metropolitan Melbourne. It would create serious environmental justice concerns if, for example, the Neighbourhood Residential Zones were concentrated in affluent residential areas like Carlton, Camberwell and Toorak, and the Residential Growth Zones were concentrated in less affluent areas like Footscray and Tullamarine.

It is therefore important that the process for allocating these zones is equitable. The Department of Planning and Community Development (DPCD) website suggests that this process will be driven by councils:

"After the comment period concludes and the zones are finalised, councils will have twelve months to consider and apply for a conversion of the existing residential zones. Criteria to help councils with their conversion will be made available after the zones have been finalised"<sup>6</sup>

To avoid any environmental justice concerns, the process for allocating these zones must:

- *allow genuine participation*. Communities must be given a real, informed choice in whether their area be marked for residential growth or preservation. The Grattan Institute has outlined one way of doing this in their report, *Getting the Housing We Want*, through the model of a Neighbourhood Development Corporation.<sup>7</sup>
- *include an Environmental Justice Assessment*. The decisions to mark some areas for growth and others for preservation must be accompanied by an assessment of the equity impacts. One model for doing this has already been demonstrated by the City of New York,<sup>8</sup> and a similar legal mechanism could be readily adopted here.

## Recommendation

- The process for allocating new residential zones to particular areas must allow for genuine community participation, and be accompanied by an environmental justice assessment.

<sup>6</sup> <http://www.dpcd.vic.gov.au/planning/theplanningsystem/improving-the-system/new-zones-for-victoria/new-and-reformed-residential-zones>.

<sup>7</sup> Grattan Institute, *Getting the Housing we Want*, available here: <http://grattan.edu.au/publications/reports/post/getting-the-housing-we-want/>.

<sup>8</sup> See, for example, Tom Angotti, *City Planning And Environmental Justice In New York City: Waste, Race And Place*, available here: <http://urban.hunter.cuny.edu/~tangotti/NYC%20Waste%20Place%20Race.htm>

## Conclusion

Reforms to Victoria’s planning zones which increase their simplicity and flexibility, but do not come at the expense of environment protection, are very welcome. However, the proposed reforms fall short of that mark in a few key respects — particularly so far as the proposed reforms to the rural zones are concerned. We hope that these problems can be rectified, and that the planning system can be modernised and improved without sacrificing the natural environment that so many Victorians value.