

1. Planning Schemes

1.1. What is a planning scheme?

A planning scheme is a statutory document which sets out objectives, policies and provisions relating to the use, development, protection and conservation of land in the area to which it applies. A planning scheme regulates the use and development of land through planning provisions to achieve those objectives and policies.

PEA ss. 4A(2), 6(1), 6(2)

Matters that a planning scheme may provide for are described in section 6 of the *Planning and Environment Act 1987* (the Act).

PEA s. 6(1)

The Act requires that a planning scheme:

- must seek to further the objectives of planning in Victoria within the area covered by the scheme
- must contain a Municipal Strategic Statement (MSS), if the scheme applies to the whole or part of a municipality
- may make any provision which relates to the use, development, protection or conservation of any land in the area (section 3 of the Act defines the meaning of these terms).

1.2 What are the Victoria Planning Provisions?

The Act distinguishes between the *Victoria Planning Provisions* (VPP) and a planning scheme. The VPP is a document containing a comprehensive set of planning provisions for Victoria. It is not a planning scheme and does not apply to any land. It is a Statewide reference used, as required, to construct planning schemes. It is a statutory device to ensure that consistent provisions for various matters are maintained across Victoria and that the construction and layout of planning schemes is always the same.

In preparing and maintaining the planning scheme, a council draws from the VPP in two essential ways:

1. It must include provisions which are mandatory in all planning schemes in Victoria. These include the State Planning Policy Framework (SPPF), the 'particular provisions' applying to specified categories of use and development (such as car parking and advertising signs), the 'general provisions' and the 'definitions'.
2. It may include provisions which are relevant to or give effect to its MSS and local planning policies (LPPs). These provisions will include the relevant State-standard zones and overlays to be applied in the scheme. Some of these zones and overlays include local provisions as schedules to the zone or overlay.

In the simplest terms, a planning scheme is constructed by taking the VPP as a basic template. Into this is inserted the local vision and policy framework (the MSS and LPPs). The zones and overlays needed to implement these are then selected and appropriate local provisions are written to support the zones and overlays (the schedules).

1.3 Who and what is affected by a planning scheme?

PEA s. 16

Planning schemes may apply to all private and public land in Victoria. A planning scheme is binding on all members of the public, on every Victorian Minister, government department, public authority and council.

The land to which a planning scheme may apply includes land covered by water (such as lakes and some coastal waters) and areas above or below ground (such as air rights and excavations).

PEA s. 16

Exemptions may be provided by a Governor in Council Order published in the *Government Gazette*.

Current exemptions under section 16 of the Act apply to a number of Ministers. Exemptions also apply to specific sites and projects, such as parts of Albert Park.

Where they have been exempted from any legal need to comply with planning scheme requirements, as a matter of practice the Ministers concerned should consult from an early stage with relevant planning authorities on proposed works. This consultation fosters cooperative involvement of local government in State planning and development matters. Consultation needs to be effective and therefore should be more than the mere circulation of proposals.

Under section 52(i) of the Commonwealth Constitution and the *Commonwealth Place (Administration of Laws) Act 1970 (Vic)* and subject to *Commonwealth Places (Application of Laws) Act 1970 (Cth)*, the Commonwealth has exclusive legislative power in relation to places acquired by the Commonwealth for a public purpose. Therefore a planning scheme does not apply to a 'Commonwealth place'. Whether a particular Commonwealth agency is considered the Commonwealth may depend on its governing legislation, funding and level of control. For example, bodies such as Telstra Corporation, Australia Postal Commission and the Australian Broadcasting Corporation are subject to a planning scheme.

Any requirement in a planning scheme seeking to regulate the use or development of Commonwealth land is inoperative. Land disposed of by the Commonwealth can only be subject to planning controls if an amendment is prepared and approved after disposal. Commonwealth land is identified as CA on planning scheme maps.

1.3.1 Existing uses

PEA s. 6(3), (4)

A planning scheme cannot prevent the continuation of a lawfully existing use under the Act if the existing use was established before the scheme came into operation.

Planning scheme Cl. 63

Clause 63 of the planning scheme provides that an existing use right is established if any of the following apply:

- the use was lawfully carried out immediately before the approval date
- a permit for the use had been granted immediately before the approval date and the use commences before the permit expires
- a permit for the use had been granted for an alternative use, which does comply with the scheme, and the use commences before the permit expires
- proof of continuous use for 15 years is established
- the use is a lawful continuation by a utility service provider or other private body of a use previously carried on by a Minister, government department or public authority, even where the continuation of the use is no longer for a public purpose.

This does not apply to a lawful use of land:

- which has stopped for a continuous period of two years
- which has stopped for two or more periods, which together total two years in any period of three years, or
- in the case of a seasonal use, which does not take place for two years in succession.

For existing use rights established through a use having been lawfully carried out immediately before the approval date, the relevant 'approval date' is:

- the date when the planning scheme commenced operation; or
- the date when an amendment to the planning scheme commenced operation which would have had the effect of restricting or prohibiting the use.

Planning scheme Cl. 63.11

It is sometimes necessary to trace an existing use back through prior planning schemes or provisions over many years to determine its lawfulness. However, to avoid cumbersome investigations, planning schemes deem an existing use to have been lawfully established if proof of continuous use for 15 years is established in accordance with Clause 63.11 of the planning scheme.

Existing use rights apply to land, not to the owners or others with an interest in the land. It is also important to note that these rights apply only to the use of land, not development. What is allowed to continue is the use that was lawfully carried out immediately prior to the approval date of the amendment or scheme that prohibited the use. In this situation, the use is confined to the same specific use, not by the definitions of use appearing in the scheme.

The principles of establishing the use to which existing use rights apply are based on those appearing in cases such as *Shire of Perth v O'Keefe* (1964) 10 LGRA 147 and *City of Nunawading v Harrington* [1985] VR 641.

PEA s. (6),(4A)

The Act allows planning schemes to require that existing uses comply with a Code of Practice which has been approved by Parliament. For example, planning schemes currently require the use of land for timber production to comply with the *Code of Forest Practices for Timber Production*.

1.3.2 Who administers it?

PEA ss. 13, 14

The administration and enforcement of a planning scheme is the duty of a responsible authority. In most cases this will be a council but it can be the Minister administering the Act or any other person whom the planning scheme specifies as a responsible authority for that purpose. For example, in the Melbourne Planning Scheme, the Minister for Planning is the responsible authority for land in a number of areas including the Melbourne Casino Area, Melbourne Docklands Area, Flemington Racecourse and the Royal Melbourne Showgrounds.

A council will usually act as both planning authority and responsible authority.

PEA s. 201A

If the responsible authority for particular land or particular matters changes at any time (for whatever reason), the 'old' responsible authority immediately loses its powers and matters of a continuing nature can be decided (without any need to start again) by the 'new' responsible authority. Relevant documents must be transferred to assist the 'new' responsible authority.

PEA ss. 201A, 201B

If the change is due to an alteration in administrative boundaries, a planning scheme amendment will eventually be needed to transfer the control over affected land to another planning scheme.

1.3.3 Where must a planning scheme be available for inspection?

PEA ss. 40, 42

The Act requires the council and the responsible authority to maintain an up-to-date copy of the planning scheme, incorporating all amendments to it and all documents lodged with those amendments. (In most cases the council is also the responsible authority for the scheme). The planning scheme must be made available free of charge for public inspection during office hours. A similar but more extensive requirement applies to the Minister administering the Act, who must make available updated copies of all operative schemes in Victoria. These documents are available at the offices of the Department of Planning and Community Development, online at www.dpcd.vic.gov.au/planningschemes and (for all schemes that apply in the region) at the Department's relevant regional office.

PEA s. 60(1A)(g); PE
Regs r. 6

Regulation 6 requires the responsible authority to make available for inspection, free of charge, any other document which may be taken into account in accordance with section 60(1A)(f) and (g) in deciding a permit application. This includes any strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or council

This information must be available at the office of the Minister and at the council office. In any case where there is some doubt whether a document comes within the scope of this requirement, the responsible authority should make sure it is available.

1.3.4 When must a planning scheme be reviewed?

PEA s. 12B(1); 12B(2)

A planning authority which is a municipal council must review its planning scheme no later than one year after each date by which it is required to approve a Council Plan under section 125 of the *Local Government Act 1989*; or within such longer period as is determined by the Minister.

PEA s. 12B(3)

The objective of the review is to enhance the effectiveness and efficiency of the planning scheme in achieving:

- the objectives of planning in Victoria, and
- the objectives of the planning framework established by the Act.

1.3.5 What must the review evaluate?

PEA s. 12B(4)

The review must evaluate the planning scheme to ensure that it:

- is consistent in form and content with the directions or guidelines issued by the Minister under section 7 (see 1.4)
- sets out effectively the policy objectives for use and development of land
- makes effective use of State provisions and local provisions to give effect to State and local policy objectives.

PEA s. 12B(5)

When the review is completed the planning authority must report its findings to the Minister without delay.

1.4 What is the Ministerial Direction on the form and content of planning schemes?

PEA s. 7(5)

Under section 7(5) of the Act, the form and content of all planning schemes prepared under Part 3 of the *Planning and Environment (Planning Schemes) Act 1996* and any amendment to a planning scheme must comply with the *Ministerial Direction on the Form and Content of Planning Schemes*.

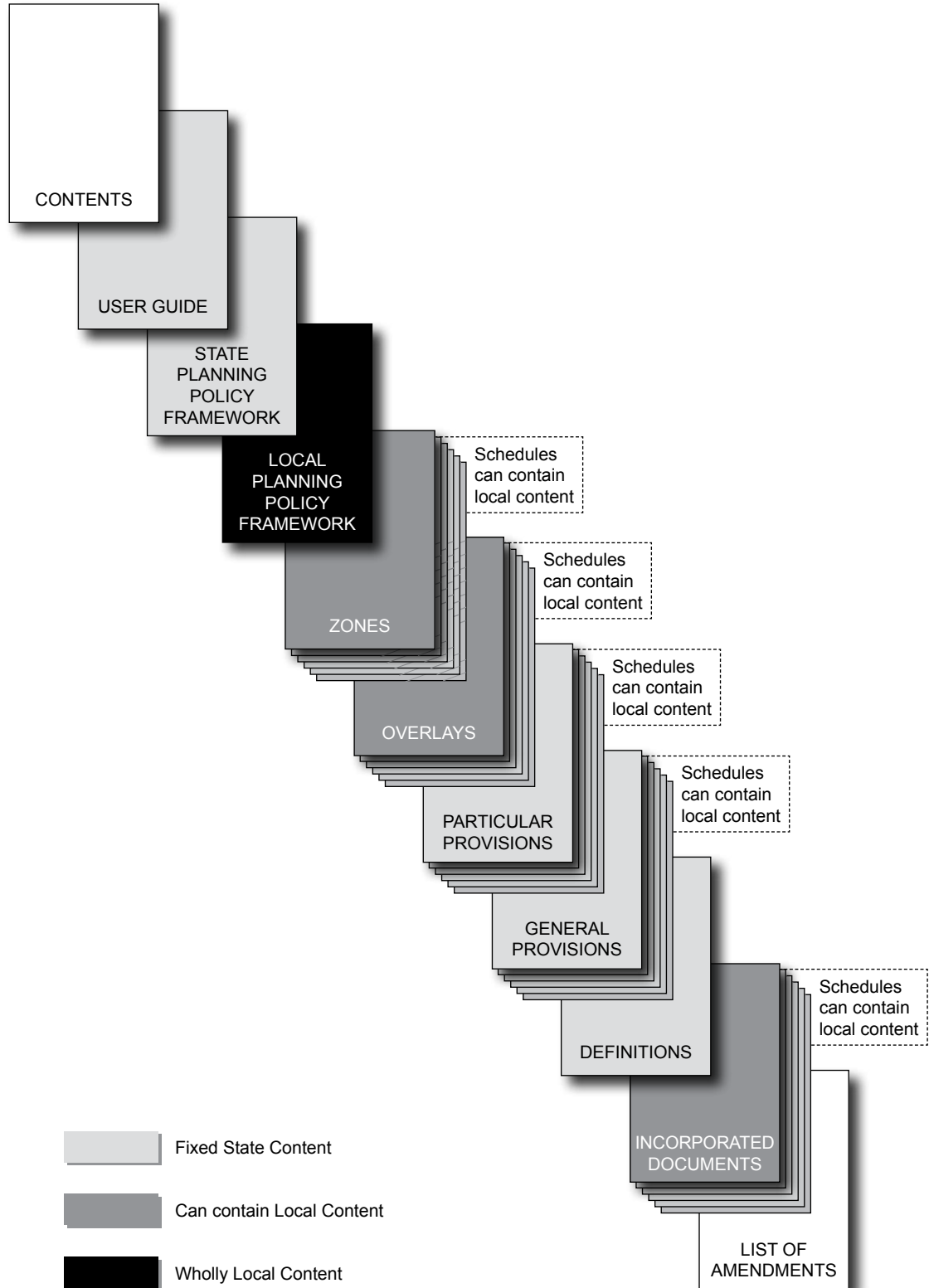
The *Ministerial Direction on the Form and Content of Planning Schemes* requires that a planning scheme must include the following parts of the VPP in the same order:

- Objectives of planning in Victoria.
- Purposes of this planning scheme.
- User guide.
- SPPF – Clauses 11-19 (inclusive).
- Operation of zones – Clause 31 (if a planning scheme includes a zone clause).
- Operation of overlays – Clause 41 (if a planning scheme includes an overlay clause).
- Particular provisions – Clauses 51-52, 54-57 (inclusive).
- General provisions – Clauses 61-67 (inclusive).
- Definitions – Clauses 71-74 (inclusive).
- Incorporated documents – Clause 81.

The *Ministerial Direction on the Form and Content of Planning Schemes* states that a planning scheme must not include any zone or overlay clause other than a zone or overlay clause selected from the VPP.

1.5 What are the components of a planning scheme?

Figure 1.1: Components of a planning scheme



The strategic foundation of each scheme is made up of two components, the SPPF and the Local Planning Policy Framework (LPPF). The application of zones, overlays and local provisions must have a readily discernible basis in both the state and local planning policy frameworks.

1.5.1 State Planning Policy Framework

Every planning scheme includes the SPPF. The framework comprises general principles for land use and development in Victoria and specific policies dealing with settlement, environment, housing, economic development, infrastructure, and particular uses and development. To ensure integrated decision-making, planning authorities and responsible authorities must take account of and give effect to the general principles and the specific policies contained in the SPPF.

1.5.2 Local Planning Policy Framework

The LPPF sets a local and regional strategic policy context for a municipality. It comprises the MSS and specific local planning policies.

The LPPF must not operate inconsistently with the SPPF and should where possible demonstrate how broader state planning policies will be achieved or implemented in a local context.

PEA s. 7(4)

If there is an inconsistency between the SPPF and the LPPF, the SPPF prevails.

Municipal Strategic Statement

An MSS is a part of the LPPF and is a statement of the key strategic planning, land use and development objectives for the municipality and the strategies and actions for achieving those objectives. It promotes the objectives of planning in Victoria to the extent that the SPPF is applicable to the municipality and local issues. The MSS establishes the strategic planning framework for the municipality and encapsulates significant planning directions. The SPPF and MSS provide the strategic basis for the application of the zones, overlays and particular provisions in the planning scheme and decision-making by the responsible authority.

PEA s. 12A(4)

The MSS provides an opportunity for an integrated approach to planning across all areas of a council's operations and should clearly express links to the council's corporate plan. The MSS is dynamic and enables community involvement in its ongoing review. The MSS should be continually refined as the responsible and planning authority develops and revises its strategic directions in response to the changing needs of the community.

The MSS must be taken into account when preparing amendments to a planning scheme or making decisions under the scheme.

Local Planning Policy

An LPP sets out the guiding principles of the planning scheme and is one of the tools available for implementing objectives and strategies in the MSS.

An LPP is a policy statement of intent or expectation. It states what the responsible authority will do in specified circumstances, or the responsible authority's expectation of what should happen. An LPP gives a planning authority an opportunity to state its view of a planning issue and its intentions for an area. LPPs provide guidance to decision-making on a day-to-day basis where this is not achievable in the VPP zones and overlays.

An LPP helps the community to understand how a proposal will be considered and what will influence decision-making. Over time, the consistent application of policy should achieve the desired outcome.

LPPs must be taken into account when preparing amendments or making decisions.

1.5.3 Zones

Standard zones for Statewide application are included in the VPP. These zones are used in all schemes as required. An important feature of the zones, which is reflected in the first purpose of each zone, is that they are to be administered to implement the SPPF and LPPF, including the MSS and LPPs.

Each planning scheme includes only those zones required to implement its strategy. There is no ability to vary the zones or to introduce local zones. Additional zones can only be introduced by an amendment to the VPP. Some zones have schedules that provide for local circumstances, such as the Mixed Use Zone, the Farming Zone and the Public Conservation and Resource Zone. Refer to section 1.5.11 for a short summary of each of the zones.

1.5.4 Overlays

In addition to the requirements of the zone, further planning provisions may apply to a site or area through the application of an overlay. Both are equally important. As with the zones, standard overlays for Statewide application are included in the VPP. Each planning scheme includes only those overlays required to implement strategy. Generally, overlays apply to a single issue or related set of issues (such as heritage, an environmental concern or flooding). Where more than one issue applies to land, multiple overlays can be used. Overlays must have a strategic justification. Many overlays have schedules to specify local objectives and requirements. Generally, overlays may only make requirements about development, not use. Overlays do not change the intent of the zone. Refer to section 1.5.12 for a short summary of each of the overlays.

1.5.5 Particular provisions

Particular provisions are specific prerequisites or planning provisions for a range of particular uses and developments, such as advertising signs and car parking. They apply consistently across the State and there is no ability to include in planning schemes particular provisions which are not in the VPP. Unless specified otherwise, the particular provisions apply in addition to the requirements of a zone or overlay.

1.5.6 General provisions

General provisions are operational requirements which are consistent across the State. The general provisions include matters such as existing use rights, administrative provisions, ancillary activities and referral of planning permit applications.

1.5.7 Schedules

Schedules are used to identify the needs, circumstances and requirements of individual municipalities in specific circumstances. Together with the LPPF, schedules are the means of including local content in planning schemes. They can be used to supplement or 'fine-tune' the basic provisions of a State-standard clause, zone or overlay in a planning scheme, adapting it to local circumstances and locally defined objectives. This means that schedules are a key tool for implementing objectives and strategies in the MSS.

Schedules can only be included in a planning scheme where allowed by the VPP. They must use the format shown in the *Ministerial Direction on the Form and Content of Planning Schemes*.

For more information on schedules refer to the Planning Practice Note *Writing Schedules* and other relevant VPP Planning Practice Notes.

1.5.8 Definitions

A set of definitions is included in the VPP and applies in all schemes. Defined terms are separated into general terms, outdoor advertising terms and land use terms.

Local provisions should not create specific local definitions. When writing planning scheme provisions, care should be taken to ensure that the terms used are consistent with their meaning in the Act, the *Interpretation of Legislation Act 1994* and the definition section of the scheme. In situations where a term is not defined in these documents, it will be considered to have its ordinary or common meaning having regard to general principles of legal or statutory interpretation. Where a dictionary is used as an aid to definition or interpretation, the preferred source is the *Macquarie Dictionary*.

1.5.9 Incorporated documents

PEA s. 6(2)(j)

Planning schemes may apply, adopt or incorporate any document that relates to the use, development or protection of land. This allows a link between the planning scheme and external documents that may inform the planning scheme, guide decision-making or affect the operation of the scheme. This includes a range of codes, strategies, guidelines, plans or similar documents.

An external document may be incorporated into the planning scheme through being included in the list of incorporated documents in Clause 81 of the planning scheme. The document then carries the same weight as other parts of the scheme and can only be changed by a planning scheme amendment.

At the local level, planning authorities may wish to incorporate their own documents. Development guidelines, incorporated plans or restructure plans are common types of incorporated documents.

If an external document is mentioned in a planning scheme, but has not been formally incorporated, it is only regarded as a reference document and carries less weight than if it formed part of the scheme.

For further information on incorporated documents refer to the Planning Practice Note *Incorporated and Reference Documents*.

1.5.10 List of amendments

This list includes all state and local amendments to the scheme and includes a brief description of the amendment. It is not a formal part of the scheme.

1.5.11 Summary of the zones

The following is a short summary of each of the zones.

Residential 1 Zone (Clause 32.01 and sch32.01)

This is the main zone to be applied in serviced residential areas. It provides for a range of dwelling types and dwelling densities and for a limited range of other uses commonly found in residential areas. A schedule to the zone can be used to change the permit requirement for a dwelling, based on lot size, and certain siting requirements.

Residential 2 Zone (Clause 32.02 and sch32.02)

This zone encourages residential development at medium or higher densities to make optimum use of available services and facilities. The zone is intended particularly for areas identified as suitable for medium density development, or areas where medium density development is unlikely to adversely impact on other residences. In this zone an application to develop land for medium density housing is exempt from the requirement to give notice and an objector or other third party is unable to apply to the Victorian Civil and Administrative Tribunal to review the decision to grant a permit. A schedule to the zone can be used to change the permit requirement for a dwelling, based on lot size, and certain siting requirements.

Low Density Residential Zone (Clause 32.03 and sch32.03)

This zone is intended for areas that are shown to be appropriate for subdivision into lots which are both large enough (in the absence of reticulated sewerage) to contain all wastewater on site and small enough to be maintained without the need for agricultural techniques or equipment. The zone provides a minimum lot size of 0.4 hectare unless an alternative is specified in a schedule to the zone. The creation of smaller lots is prohibited unless the subdivision is the re-subdivision of existing lots or the creation of a small lot for a utility installation. Refer to *Ministerial Direction No. 6 Rural Residential Development* when considering this zone.

Mixed Use Zone (Clause 32.04 and sch32.04)

This zone provides for a range of residential, commercial, industrial and other uses and is suitable for areas with a mixed use character. A schedule to the zone allows the maximum floor space of certain uses to be limited and can be used to change the permit requirement for a dwelling (based on lot size) and certain siting requirements.

Township Zone (Clause 32.05)

This zone is intended to apply to small towns where there is no consistent structure of commercial, residential and industrial land use. A schedule to the zone can be used to change the permit requirement for a dwelling, based on lot size, and certain siting requirements.

Residential 3 Zone (Clause 32.06 and sch32.06)

This zone is intended to apply to established residential areas where making the standard building height a maximum is necessary to protect neighbourhood character and amenity. The zone replicates the Residential 1 Zone except that it includes provisions that limit the height of dwellings and residential buildings to a maximum of 9 metres or 10 metres on sloping sites. A schedule to the zone can be used to change the permit requirement for a dwelling, based on lot size and certain siting requirements.

Industrial 1 Zone (Clause 33.01 and sch33.01)

This is the main zone to be applied in most industrial areas. It includes additional requirements for land in proximity to residential areas. A schedule to the zone allows the maximum floor space of certain uses to be limited.

Industrial 2 Zone (Clause 33.02)

This zone is for large industrial areas which have a core more than 1500 metres from residential areas and are of state significance. Note that special requirements apply to the 'core' area of this zone (the area more than 1500 metres from a residential zone) as this area is a resource intended to be reserved for uses which require that degree of separation from residential and similar areas. Each industry in the core area will be considered on its merits depending upon its effect on neighbouring industries and communities. Generally, uses that do not depend on such a location are discouraged.

Industrial 3 Zone (Clause 33.03 and sch33.03)

This zone is designed to be applied as a buffer between the Industrial 1 Zone or Industrial 2 Zone and residential areas, if necessary. It may also be applied to industrial areas where special consideration is required because of industrial traffic using residential roads, unusual noise or other emission impacts, or to avoid inter-industry conflict. A schedule to the zone allows the minimum leaseable floor area for certain uses to be specified.

Business 1 Zone (Clause 34.01 and sch34.01)

This is the main zone to be applied in most retail/commercial areas. It allows a wide range of commercial activities. A schedule to the zone allows the maximum floor space of certain uses to be limited.

Business 2 Zone (Clause 34.02 and sch34.02)

This zone encourages offices and associated commercial uses. A schedule to the zone allows the maximum floor space of certain uses to be limited.

Business 3 Zone (Clause 34.03 and sch34.03)

This zone enables the integrated development of offices, manufacturing industries and associated commercial and industrial uses. Generally, this zone would only be applied in specialist locations where this type of development is either existing or strategically justifiable. A schedule to the zone allows the maximum floor space of certain uses to be limited.

Business 4 Zone (Clause 34.04 and sch34.04)

This zone provides for a mix of retailing for bulky goods, manufacturing industry and associated business services. This zone will typically be applied on road-exposed locations where it is necessary to ensure that sufficient area is available to allow a design which protects the safety and amenity of roads through the use of service roads, rear access and other techniques. Generally, this zone would only be applied in specialist locations where this type of development is either existing or strategically justifiable. A schedule to the zone allows the maximum floor space of certain uses to be limited.

Business 5 Zone (Clause 34.05)

This zone encourages the co-location of offices and dwellings, including multi-dwelling units. Typically, the zone will be applied at the edges of centres where a mix of uses either exists or is strategically justified.

Rural Zone (Clause 35.01 and sch35.01)

This zone was formerly the main zone that applied in most rural areas. It is no longer being applied and is being replaced by the Farming Zone. A schedule to the zone allows the standard lot size to be varied, if justifiable and a number of other matters to be specified.

Environmental Rural Zone (Clause 35.02 and sch35.02)

This zone was formerly applied where specific environmental considerations applied to rural land. It is no longer being applied and is being replaced by the Rural Conservation Zone. A schedule to the zone allows an environmental outcome, an appropriate lot size and a number of other matters to be specified.

Rural Living Zone (Clause 35.03 and sch35.03)

This zone provides for predominantly residential use in a rural environment provided appropriate land management is exercised. This zone should only be used where this type of use exists, or where such a use can be strategically justified. The zone also provides for agricultural activities provided that the amenity of residential living is protected. A schedule to the zone allows the lot size and a number of other matters to be specified. Refer to *Ministerial Direction No. 6 Rural Residential Development* when considering this zone.

Green Wedge Zone (Clause 35.04 and sch35.04)

The purpose of this zone is to recognise and protect non-urban land outside the Urban Growth Boundary in the Melbourne metropolitan area for its agricultural, environmental, historic, landscape or recreational values, or mineral and stone resources. The zone provides a minimum lot size of 40 hectares unless an alternative is specified in a schedule to the zone. The creation of smaller lots is prohibited unless the subdivision is the re-subdivision of existing lots or the creation of a small lot for a utility installation.

Green Wedge A Zone (Clause 35.05 and sch35.05)

The zone provides opportunity for residential development outside of the Urban Growth Boundary in the Melbourne metropolitan area. It also provides opportunity for most agricultural uses and limits non-rural uses to those that support agriculture or tourism provided that the amenity of residential living is protected. It seeks to protect and enhance the biodiversity, natural resources, scenic landscapes and heritage values and to promote sustainable land management. The zone provides a minimum lot size of 8 hectares unless an alternative is specified in a schedule to the zone. The creation of smaller lots is prohibited unless the subdivision is the re-subdivision of existing lots or the creation of a small lot for a utility installation.

Rural Conservation Zone (Clause 35.06 and sch35.06)

This zone replaces the Environmental Rural Zone. It is designed to protect and enhance the natural environment for its historic, archaeological, scientific, landscape, faunal habitat and cultural values. Agriculture is allowed provided it is consistent with the environmental and landscapes values of the area. This zone could also be applied to rural areas degraded by environmental factors such as salinity or erosion. A schedule requires specific conservation values to be stated. The zone provides a minimum lot size of 40 hectares unless an alternative is specified in a schedule to the zone. The creation of smaller lots is prohibited unless the subdivision is the re-subdivision of existing lots or the creation of a small lot for a utility installation.

Farming Zone (Clause 35.07 and sch35.07)

This zone replaces the Rural Zone as the main zone to be applied in rural areas. It encourages the retention of productive agricultural land and the use and development of land based on comprehensive and sustainable land management practices and infrastructure provision. The zone provides a minimum lot size of 40 hectares unless an alternative is specified in a schedule to the zone. The creation of smaller lots is prohibited unless the subdivision is the re-subdivision of existing lots or the creation of a small lot for a utility installation.

Rural Activity Zone (Clause 35.08 and sch35.08)

This zone is designed to be applied to areas where agricultural activities and other land uses can co-exist. A wider range of tourism, commercial and retail uses may be considered in the zone. Agriculture has primacy, but other uses may be established if they are compatible with the agricultural, environmental and landscape qualities of the area. A minimum lot size must be specified in a schedule to the zone. The creation of smaller lots is prohibited unless the subdivision is the re-subdivision of existing lots or the creation of a small lot for a utility installation.

Public Use Zone (Clause 36.01 and sch36.01)

This zone recognises the use of land for a public purpose and prescribes a number of categories of public use which can be shown on the planning scheme map. This is the main zone for public land used for utility or community service provision. A schedule allows specified uses or managers of public land to be exempted from specified requirements. Alternative advertising sign categories may be specified if required.

Public Park and Recreation Zone (Clause 36.02 and sch36.02)

This is the main zone for public open space and public recreation areas. A schedule allows specified uses or managers of public land to be exempted from specified requirements. It also allows an exemption for buildings and works specified in an Incorporated Plan. Alternative advertising sign categories may be specified if required.

Public Conservation and Resource Zone (Clause 36.03 and sch36.03)

This zone provides for places where the primary intention is to conserve and protect the natural environment or resources. It also allows associated educational activities and resource-based uses. A schedule allows specified uses or managers of public land to be exempted from specified requirements. It also allows an exemption for buildings and works specified in an Incorporated plan. Alternative advertising sign categories may be specified if required.

Road Zone (Clause 36.04)

This zone enables declared roads and other important roads or proposed roads to be designated on the planning scheme map. A road designated as a declared road under the *Transport Act 1993* must be included in a Road Zone – Category 1. Other roads (or proposed roads where the land has been acquired) may be included as Category 1 or Category 2 roads if appropriate. Certain uses, such as car wash and convenience restaurant, may only be permitted if the site abuts a Road Zone. This fact should be considered when deciding whether or not to include a road in the zone. VicRoads can provide information about declared roads in each municipality.

Special Use Zone (Clause 37.01 and sch37.01)

This zone provides for the use of land for specific purposes. The purposes and the land use requirements are specified in a schedule to the zone. This allows detailed land use requirements to be prescribed for a particular site. Development conditions (where they are necessary) should still be set out in a permit rather than the scheme. Exemptions from notification and review can be given if desired. Note that the *Ministerial Direction on the Form and Content of Planning Schemes* includes some specific requirements about this zone and the Planning Practice Note *Using the Special Use Zone* explains the use of this zone in more detail.

Comprehensive Development Zone (Clause 37.02 and sch37.02)

This zone is similar to the Special Use Zone but is designed to allow more complex developments in accordance with a comprehensive development plan incorporated in the scheme. Generally, only large or complex developments would warrant the use of this zone.

Urban Floodway Zone (Clause 37.03 and sch37.03)

This zone should be applied to urban land identified as part of the active floodway, or to a high hazard area with high flow velocities, where impediment of flood water can cause significant changes in flood flows and adversely affect flooding in other areas. Where land is subject only to inundation and low velocities, the Land Subject to Inundation Overlay can be used. The views and flooding information of the relevant floodplain management authority must be considered when applying this zone.

Capital City Zone (Clause 37.04 and sch37.04)

This zone is similar to the Special Use Zone and provides for the use of land in Melbourne's central city area, recognising its role as the capital of Victoria and as an area of national and international importance. The purposes and the land use requirements are specified in the schedule to the zone. This allows detailed land use requirements to be prescribed for a particular site or area. Development conditions, where necessary, should be set out in a permit rather than the scheme.

The zone does not specify an advertising category, but requires a permit for all signs unless a schedule specifies otherwise. Exemptions from notice and review can be given if desired. Note the *Ministerial Direction on the Form and Content of Planning Schemes* includes some specific requirements about this overlay.

Docklands Zone (Clause 37.05 and sch37.05)

This zone is similar to the Special Use Zone and provides for the use and development of land in Melbourne's Docklands area in a manner consistent with the development strategy adopted by the Docklands Authority.

The purposes and land use requirements are specified in the schedule to the zone. This allows detailed land use requirements to be prescribed for a particular site or area. Development conditions, where necessary, should be set out in a permit rather than the scheme. The schedule specifies car parking requirements in this zone.

Exemptions from notification and appeal can be given if desired. Note the *Ministerial Direction on the Form and Content of Planning Schemes* includes some specific requirements about this zone.

Priority Development Zone (Clause 37.06 and sch37.06)

This is a specialised zone designed to implement approved strategies and developments of State or regional significance at specific locations such as Transit Cities, Activity Centres and other state significant urban renewal sites. The zone facilitates the approval and management of complex projects where agreement has been reached with the responsible authority and the development industry about the desired form of development. The detailed provisions of the zone are linked to agreed development plans. The zone exempts development that conforms with an agreed incorporated plan from third party appeals unless a right to appeal is specifically included in the schedule.

1.5.12 Summary of the overlays

The following is a short summary of each of the overlays.

Environment and Landscape Overlays

Environmental Significance Overlay (Clause 42.01 and sch42.01)

Environmental significance is intended to be interpreted widely and may include issues such as effects from noise or industrial buffer areas, as well as issues related to the natural environment. These issues and the intended effects or outcomes of the requirements being imposed must be clearly stated.

Vegetation Protection Overlay (Clause 42.02 and sch42.02)

This overlay can apply to any form of vegetation native or otherwise. The significance of identifying the vegetation must be stated, together with the intended outcomes of imposed requirements. Generally, some description of the vegetation would be expected in a reference document.

Significant Landscape Overlay (Clause 42.03 and sch42.03)

The reasons or characteristics which make up the significance of the landscape identified must be stated, together with the intended outcomes of imposed requirements. Generally, some explanation for the significance of the landscape would be expected in a reference document.

Heritage and Built Form Overlays

Heritage Overlay (Clause 43.01 and sch43.01)

Any heritage place with a recognised citation should be included in the schedule to this overlay. In addition, any heritage place identified in local heritage studies can also be included.

A heritage place can have a wide definition and may include a single object or an area.

There should be a rigorous heritage assessment process leading to the identification of the place. The documentation for each place should include a Statement of Significance which establishes the importance of the place. (See the *Local Government Heritage Guidelines 1991* for the requirements for a Statement of Significance.)

Design and Development Overlay (Clause 43.02 and sch43.02)

This overlay is principally intended to implement requirements based on a demonstrated need to control built form and the built environment. The intended built form outcome must be clearly stated, as must the way in which the imposed requirements will bring this about. Where possible, performance-based requirements should be used rather than prescriptive ones.

Incorporated Plan Overlay (Clause 43.03 and sch43.03)

This overlay should be used where some form of plan is required to specify requirements for the development of an area and where it is necessary for the plan to be incorporated in the scheme. The VPP makes no distinction between the form or content of an incorporated plan or a development plan. It does make a distinction, however, about the way in which they are related to the scheme and the way in which they can be approved and amended.

If a plan is incorporated in the scheme it can only be changed by a planning scheme amendment.

Development Plan Overlay (Clause 43.04 and sch43.04)

This overlay should be used where the form of development is appropriately controlled by a plan which satisfies the planning authority and a planning scheme amendment is not considered necessary to amend the plan.

Neighbourhood Character Overlay (Clause 43.05 and sch43.05)

This overlay identifies areas of existing or preferred neighbourhood character. It requires a planning permit for buildings and works and the demolition or removal of a building or tree if specified in a schedule to the overlay. A schedule to the overlay can be used to modify certain standards of Clause 54 or Clause 55 of the planning scheme.

Land Management Overlays

Erosion Management Overlay (Clause 44.01 and sch44.01)

This overlay identifies land subject to significant erosion. Generally, there should be appropriate technical justification available to support the application of this overlay.

Salinity Management Overlay (Clause 44.02 and sch44.02)

This overlay identifies land subject to significant salinity. It requires a planning permit for buildings and works, subdivision and the removal of vegetation in areas affected by salinity. All applications are referred to the Department of Sustainability and Environment. Generally, there should be appropriate technical justification available to support the application of this overlay.

Floodway Overlay (Clause 44.03 and sch44.03)

This overlay should be applied to urban and rural land identified as part of the active floodway, or to a high hazard area with high flow velocities, where impediment of flood water can cause significant changes in flood flows and adversely affect other areas. The identification of these areas should be established in consultation with the relevant floodplain management authority.

Land Subject to Inundation Overlay (Clause 44.04 and sch44.04)

This overlay applies to land in either rural or urban areas which is subject to inundation, but is not part of the primary floodway. The identification of these areas should be established in consultation with the relevant floodplain management authority.

Special Building Overlay (Clause 44.05 and sch44.05)

This overlay applies to urban land which is subject to stormwater flooding or overland flow, but is not part of the primary floodway. The identification of these areas should be established in consultation with the relevant floodplain management authority.

Wildfire Management Overlay (Clause 44.06 and sch44.06)

This overlay can be applied to areas identified by the Country Fire Authority (CFA) as having high bushfire hazard. The identification of these areas should be established in consultation with the CFA. The Planning Practice Note *Planning for Wildfire Protection* explains the use of this overlay in more detail.

State Resource Overlay (Clause 44.07 and sch44.07)

This overlay should be applied to protect areas of mineral, stone and other resources, identified as being of State significance, from development that would prejudice the current or future productive use of the resource.

Other Overlays

Public Acquisition Overlay (Clause 45.01 and sch45.01)

This overlay identifies land that is proposed to be acquired for a public purpose. It has the effect of reserving the land under the *Land Acquisition and Compensation Act 1986*. The authority acquiring the land and the purpose of the acquisition must be set out in the schedule. Land which is already acquired by a public authority should be included in an appropriate zone, not in this overlay.

Airport Environs Overlay (Clause 45.02 and sch45.02)

This overlay should only be applied to land specifically identified as subject to high levels of noise and will only be necessary for certain airfields. The 20 ANEF noise contour defines what is a high level of noise for planning purposes. Where no ANEF contour exists, Australian Standard AS2021 – 2001, “Acoustics – Aircraft noise intrusion – Building Siting and Construction”, gives guidance for determining an appropriate boundary.

Schedule 1 is intended to apply to land in areas of significantly high noise exposure where AS2021 – 1994 would indicate that residential land use, in particular, should be precluded (generally in excess of the 25 ANEF noise contour). The schedule prescribes that certain land uses must not be granted a planning permit and that other uses will require a permit. An application to use land under this overlay must be referred to the airport owner under section 55 of the Act.

Schedule 2 is intended to apply to land in areas of high noise exposure where AS2021 – 1994 would indicate that building design associated with residential land use in particular should be controlled (generally in excess of the 20 ANEF noise contour). The schedule requires that an application to use land for certain uses must be referred to the airport owner under section 55 of the Act.

Environmental Audit Overlay (Clause 45.03)

This overlay should be applied only to land identified, known or reasonably suspected of being contaminated and which has not satisfied one of the two requirements of the overlay. Refer to the *Ministerial Direction No 1 Potentially Contaminated Land*. This overlay has a specific purpose only and is not intended to generally identify all land known or suspected to be contaminated.

Where land has been identified as being potentially contaminated *Ministerial Direction No. 1* requires an audit to be completed to the requirements of the Direction before the site is developed. Refer to the Explanatory Statement attached to the Direction.

Road Closure Overlay (Clause 45.04)

This overlay is used to identify a road which is closed by an amendment to a planning scheme.

Restructure Overlay (Clause 45.05 and sch45.05)

This overlay applies a restructure plan to old and inappropriate subdivisions as a condition of development approval. The restructure plan should be an incorporated document, because it controls whether or not a permit can be considered.

Development Contributions Plan Overlay (Clause 45.06 and sch45.06)

This overlay identifies areas where a development contribution plan is in place. The schedule to the overlay summarises the development contributions required. A more detailed incorporated document and local planning policy will usually need to be prepared and linked to the schedule.

City Link Project Overlay (Clause 45.07)

This overlay only applies to certain areas associated with the City Link project.