

This VPP Practice Note provides guidance about using the public land zones in new format planning schemes.

The *Victoria Planning Provisions* (VPP) allow for all land, whether publicly or privately owned, to be included in zones. This removes the need for public land to be reserved under a planning scheme. The public land zones can only be applied to public land.

What is public land?

Public land is not defined in the VPP or the *Planning and Environment Act 1987*, but it is commonly accepted that public land comprises:

- Crown land
- land vested in or owned by a Minister, government department, public authority or municipal council
- land otherwise used for a public purpose.

A 'public purpose' is defined in the *Planning and Environment Act 1987* as including any purpose for which land may be compulsorily acquired under any Act to which the Land Acquisition and Compensation Act 1986 applies.

Where should the public land zones be applied?

It is intended that a public land zone be applied to public land where the surrounding zoning is inappropriate or where there is a special reason to identify separately the public land for planning purposes. This will commonly be where land management arrangements apply under legislation other than the *Planning and Environment Act 1987*.

Public land zones are not intended to identify the legal status of the land nor indicate the existing land use. They are intended to set out appropriate statutory requirements which apply to the use and development of the land in addition to the relevant land management legislation. The principles are similar to those that apply to the Special Use Zone. (See the VPP Practice Note *Applying the Special Use Zone*).

A useful test in considering if a public land zone is appropriate is to determine if a public land manager needs some level of flexibility, protection or exemption different from the surrounding zone provisions because of the special nature of the public land or asset and its control (in a land use or management sense) under another Act. **For this reason, public land zones should be applied in consultation with the relevant public land manager.**

A public land zone will normally be applied to public land owned or managed by the Department of Natural Resources and Environment or Parks Victoria, including national parks, state forests, coastal crown land and land reserved under the *Crown Land (Reserves) Act 1978*.

'By or on behalf of' the public land manager

A public land manager should be able to use and develop public land for any purpose under its relevant land management legislation without the need for a permit.

This is achieved by allowing many uses to be Section 1 within a public land zone, subject to the use being conducted *by or on behalf of* the public land manager or a specified public authority. These words should not be interpreted in a way that would allow a public land manager to have a blanket exemption within the zone to the extent that it could consent to any use or development by another party and have that use or development also automatically exempt from planning control.

The words *by or on behalf of* should be interpreted with regard to the particular statutory charter of the public land manager under its governing legislation and indicate that the use or development must be undertaken by the public land manager itself or by some other person or entity having a direct representative interest or relationship with the public land manager.

Using other zones

Land should not be automatically included in a public land zone simply because it is public land. There will be situations where a public land zone is not the most appropriate zone. Examples include roads and remnant parcels of public land in rural areas. In such cases the use of other zones and overlays may appropriately recognise the purpose for which the land is reserved.

Many public authorities established under Victorian legislation are now government business enterprises which are commercial in nature. Where the public land use is essentially of a commercial or business nature (such as an office or the provision of services) or comprises a community facility, the surrounding zoning will usually be appropriate. For example:

- Although the public land zone makes provision for its potential application to public land used for the purpose of 'education', most schools could be included in surrounding zones, particularly residential zones such as the Residential 1 Zone where one of the purposes is to provide for compatible educational uses.
- Many works depots or offices for government or local government bodies could be included in a business or industrial zone.

Where possible, to allow for competitive neutrality, similar private and public land use should be treated in the same manner for zoning purposes. For example, government schools should be zoned in the surrounding zone similar to private schools, unless there is a special reason which warrants the school being included within a public land zone.

Utility service providers

Land which is owned by or vested in a utility service provider is usually not public land and should not be included in a public land zone. A utility service provider is defined in the VPP as:

A person, other than a public authority or municipal council, having responsibility under an Act for the generation, transmission, distribution or supply of electricity, gas, power, telephone, water supply, drainage or sewerage services.

The public land zones do not and are not intended to provide for privatised or semi-privatised bodies which carry out a function of a broadly public nature. Examples include telecommunications carriers such as Telstra and electricity distribution companies. The land used by such bodies should not be included in a public land zone.

Commonwealth land

Commonwealth land is exempt from the operation of planning schemes where the land is owned by the Commonwealth or the use is carried on by a Commonwealth government agency *within the shield of the Crown*. This immunity applies to Commonwealth government departments, defence facilities and several public authorities established under Commonwealth legislation (such as the Federal Airports Corporation), but does not apply to government business enterprises such as Telstra. Commonwealth land is not included in any zone or overlay in a planning scheme. It is simply recognised by the designation "CA" on planning scheme maps.

Overlays on public land

In deciding whether to apply an overlay to land, the public land zones should be treated in the same manner as other zones. The decision about whether to apply an overlay to public land will depend on the nature of the overlay and the land management legislation of the public land manager. For example, a vegetation protection overlay over a State forest duplicates the function of the public land manager. However, a vegetation protection overlay may sometimes be appropriate over significant vegetation on road or railway land (where the core business is not the management of the vegetation).

Like the application of any overlay, there must be specific justification for the additional requirement. Appropriate provisions must be made for the routine operations of the public use, such as exemption for regular maintenance.