

BPUR Town Planning Advisory Note No. 1

12 steps to determine the feasibility of land use and development proposals in Victoria, Australia

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This is a guide to working out whether a particular land use or development proposal is feasible for a particular site, based on whether it would be able to obtain a planning permit if one is required. It is primarily aimed at multi-lot or medium-density residential use and development in residential zones, but the principles also apply to other forms of use/development and zones. It assumes that you have a site in mind, but, if not, the principles would help you to find one.

This is initially a fairly involved process but once you have done it a few times it should be easier.

Please note that this is a general guide only and may not relate to every specific circumstance. For more specific advice consult a planning professional, preferably BPUR Town Planners.

1. Look at the title of the site.

If you do not have a copy of title, you can get some of the information that you might otherwise obtain from the title from the state government online sources listed below, however it is important that you obtain a copy of title itself before making any binding decision. Determine the area of the site. If the title is not in metric, use an online conversion calculator or if you want to double-check planning maps online has an area calculator function.

Check the title for “encumbrances” – covenants, restrictions, Section 173 agreements etc (it is not necessary here to worry about details of mortgages etc). While generally most titles do not have encumbrances, and the ones that do are generally not relevant a lot of the time, occasionally, there will be one that is relevant. If there is such an encumbrance, you may have a problem as it may stop what you want to do (eg a covenant prohibiting the sale of liquor would obviously be directly relevant to a proposed licensed premises, or one prohibiting the construction of more than one dwelling on a lot would be relevant to any multi-unit proposal)¹.

2. Do a site inspection.

If you are not able to do so in person, then use Google Maps, Google Streetview, Nearmap or similar online resources². You can also get an idea of the subdivision pattern through Planning Maps Online or Land Channel. Since much of planning is about ensuring whether new use or development is appropriate to its context (eg “neighbourhood character”) it is important to have a good understanding of that context.

Look at existing land “use” and “development” generally, and more recent examples of use and development in particular, noting that (for various reasons) the existence of the latter by no means guarantees you will be able to do exactly the same thing (although it does provide some guidance, as well as having its own influence on the site context, but most neighbourhoods are

¹ Covenants etc can be removed including via the planning permit process but doing so is not easy. Most covenants are however either not relevant or are relatively easy to comply with

² All websites referred in this document are easily able to found via a simple online name search

not “intensive” in character). You can also check the VCAT website for relevant decisions, (this requires a bit of searching).

3. Consider the physical characteristics of the site.

You need to think very carefully about whether it will be physically possible to use or develop the site for whatever it is that you are proposing, including if there are significant constraints imposed upon the site by external factors that may have planning implications. The most important things to consider are whether:

- The site is on a corner or in mid-block. In general, corner sites are easier to develop (eg in the case of two dwellings on a corner lot, each dwelling can directly face its own frontage with a smaller front setback than would otherwise be the case, and without any shared areas/common property). They also have one less residential abuttal and a much greater length of street boundary on which to locate vehicle crossovers.
- The orientation of the site and what is to its immediate south – in general east-west oriented sites are good for allowing northern solar access for new dwellings but also casting shadows to any existing dwelling that will be to the south of them. In general, a north-south oriented site on the north side of a street is better to construct buildings of two or more storeys than one on the south side.
- There is adequate vehicle access (eg if you proposing to building a unit behind an existing house, is there a minimum 3.0m wide space to provide access to the rear unit?, or are there power poles or a significant gradient that might make building a new crossover difficult?).
- There are significant trees on the site (or on neighbouring land) that might have to be retained and/or protected. While there is no general definition of “significant tree”, it has a general meaning of “significant to the neighbourhood character” and a specific meaning in some planning schemes (eg which specify, usually in not so many words but sometime with an explicit definition, trees that are considered significant).
- There are either habitable room windows (particularly) north-facing ones or secluded private open space (eg a backyard, courtyard etc, but not a front garden) near a boundary of the site. This is relevant in that any new building would be required to be set back some metres from these features - which may be a significant factor for development on a very small site. Also relevant, although generally of less significance as it can be addressed via screening, is the potential for overlooking of adjoining secluded private open spaces from habitable areas of new development to occur.
- The site abuts a main road (this is also determinable by checking Planning Maps Online, below, for whether there is a Road Zone abutting the site). If it does, any new (vehicle) access to that road must generally be minimised and any new development must generally be designed to allow cars to enter and exit the site in a forwards direction, requiring more space for turning areas than otherwise. VicRoads’ formal consent, via the planning permit process, is also required to create or alter access to the road. On the other hand, some councils consider sites abutting main roads to be appropriate locations for new development due to being able to accommodate a greater rate of change than “hinterland areas”.
- The site’s location in relation to community and commercial services and facilities, including public transport, freeways, shopping centres, parks, schools etc. The closer that the site is to such features the better its development potential, as there is a general planning principle that more intensive forms of development should be located near them.

- The land is contaminated. In general, most land would not be contaminated, but if it is (eg if you want to convert a warehouse or factory to residential use), this may restrict what you want to do (however there are also things that may be done about it).
- If the proposal is a non-residential one in a primarily non-residential area, there are existing residential areas and/or dwellings nearby. This might apply for instance to a proposed industrial land use in an industrial estate or a new licensed premises in a business setting.

These issues may also be relevant to the planning scheme provisions applicable to the proposal.

4. Look at Planning Maps Online and download a Planning Report.

Find your site using the “search” tool and download a “Planning Report”³. This will detail the applicable zones and overlays, with a useful hyperlink to each one and its schedule.

You should now know at a glance which zone and (if relevant) overlay(s) affect the site.

Zones and overlays are the basic building blocks of planning, which apply via planning schemes.

A planning scheme is the key mechanism by which the use and development of land is regulated in Victoria. There are just over 80 planning schemes across the entire state, with the vast majority having the same name (eg Knox Planning Scheme) as the council that is both the “planning authority” (the authority that manages the strategic planning functions of the planning scheme) and the responsible authority (the authority for carrying out the more day-to-day or statutory planning functions associated with the scheme, such as processing permit and development plan applications, issuing or amending permits, extending permit time limits, appearing at VCAT, enforcement and - in some cases - issuing planning certificates)⁴.

All current planning schemes have a similar format, and contain a mixture of state and local provisions (ie in each case, some parts of a particular planning scheme are common to all planning schemes – which I call “state content” - and others are completely specific to that planning scheme – “local content”)⁵.

As well as some introductory clauses, all planning schemes are divided into consecutively numbered sections: State Planning Policy Framework, Local Planning Policy Framework, Zones, Overlays, Particular provisions, General provisions, Definitions and Incorporated documents.

To determine site feasibility it is probably best to start with the relevant zone and, if applicable, overlay(s). A zone is the primary form of planning control that applies to virtually all land⁶. It concerns land *use*, as well as more general types of development. An overlay is a more specific control, mainly over development but also, in a small amount of cases, land use, which applies to some land (depending on the nature of the overlay in question).

Both zones and overlays consist of a written document (sometimes known as the “ordinance”), which is numbered according to its particular place in the planning scheme (eg Clause 34.01), and which often contains a schedule under which certain matters can be varied (eg whether or not a permit is required for a particular matter, the requirements for certain uses or developments to meet, the specific outcomes sought by an overlay, etc).

³ Land Channel will give you a similar report, also with zones and overlays but Planning Maps Online’s one has a better mapping function

⁴ To avoid being caught out it is necessary to check the Schedule to Clause 61.01 of the relevant planning scheme

⁵ While much of the form of the planning scheme is determined by the state government (collectively known as the Victoria Planning Provisions), the relevant council (subject to the approval of Minister for Planning) can include local content in the form of policy, a variation to the zone or overlay schedule or simply the way that the zones or overlays are applied in the first instance

⁶ Occasionally land has more than one zone but usually only one zone applies

The main way that zones and overlays achieve their desired planning outcomes is requiring that certain things only occur with a planning permit⁷. If no permit is required, there is generally no mechanism to apply to a particular proposal all the other things in the planning scheme that might be relevant. Thus the issue of whether or not a permit is required is very critical.

Planning schemes are also regularly updated, and it is the version of the planning scheme that applies when the Council or VCAT makes its decision on an application for a permit that is relevant, not the one that may have applied earlier in the planning process. Thus it is also worth having a look at Planning Amendments Online for proposed amendments exhibited by councils, although this rarely gives advance notice of amendments by the Minister for Planning directly.

5. Read the zone to see whether your proposed use or development requires a permit.

Check in the “use table” in the first part of the zone that the proposed use (eg “Dwelling”) is either in Section 1 or 2. This means that it either would not require a planning permit or would require a planning permit, but the most important thing is that it not be in Section 3, ie that it not be a prohibited use.

There may be some confusion about where the particular use would sit within the use table, and there may also be some general confusion about what the use in question should be called. To determine this please refer to Clause 74 and 75 of the planning scheme, where there is a list of land use terms, and schematic diagrams about how some uses are “nested” (included) in others.

To determine whether your proposed development requires a permit under the zone simply read the rest of the zone. For example the Residential 1 Zone includes that: “A permit is required to: Construct two or more dwellings on a lot”. Other zones simply refer to a permit be required to construct a “building or works”. A permit is required in most zones to subdivide land. Zones also reference other parts of the planning scheme, eg Clauses 54 and 55 (“ResCode”) in relation to certain forms of residential development, and Clause 52.05 in relation to advertising signs. Zones also sometimes contain relevant decision guidelines, which, as the name suggests, are guidelines for making a decision on an application for a planning permit.

6. Read the Purpose of the zone.

This is very important, as zones set/reflect much of the strategic thinking of the planning scheme as a whole for a particular site or proposal. Each Purpose has between two and six parts, one of which is always to “implement the State Planning Policy Framework and the Local Planning Policy Framework”, including the Municipal Strategic Statement and local planning policies”.

You should be aware of whether the zone purpose is generally encouraging or discouraging of your particular proposal, although in some cases it might be neither.

A good example is the last part of the Purpose of the Residential 1 Zone (R1Z), “In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs”, with whether the use will achieve this Purpose usually being a key consideration for non-residential land use applications in the R1Z.

For development, the zone Purpose is also very important, as can be seen in the parts of each Purpose that specifically relate to residential development in the following three zones:

- Residential 1 Zone (R1Z) - “To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households” and “To encourage residential development that respects the neighbourhood character”.

⁷ Permit requirements can also be triggered by either particular or general provisions but not state or local policy

- Residential 2 Zone (R2Z) - “To encourage residential development at medium or higher densities to make optimum use of the facilities and services available” and “To encourage residential development that respects the neighbourhood character”.
- Residential 3 Zone (R3Z) – “To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households”, “To encourage residential development that respects the neighbourhood character” and “To limit the maximum height of a dwelling or residential building”.

As can be seen “To encourage residential development that respects the neighbourhood character” is common to all three zones, but the R2Z specifically encourages “medium or higher densities”; the R3Z specifically limits the “maximum height” of certain residential development (which obviously has implications for such development generally).

Sometimes, while it may not appear obvious at first, the fact that a particular zone applies, and not another, can be a key to what the council really wants for the particular area (see section on “local content” below). For example, if the Residential 2 Zone were applicable, it would seem that the council wants to see new medium (or even higher) density housing in that area; whereas the existence of a Residential 3 Zone would suggest the complete opposite. What the significance of the Residential 1 Zone, the most common residential zone, would be is a little bit more complicated, and requires a more detailed examination of the planning scheme (below).

Also, while sometimes the zone purpose itself may not even mention anything remotely like your proposal, as mentioned every zone purpose also seeks to implement the State Planning Policy Framework, which contains a much broader range of objectives than any one zone.

7. Look at the schedule to the zone to see if there is anything of relevance.

If there is anything of relevance, in the case of residential development in residential zones, it will usually involve a variation to certain, specified standards of Clause 54 or 55 (which in turn, in most cases will seek to restrict new development). The relevance of this is discussed below in relation to “local content”.

8. Read the overlay to see whether your proposed use or development requires a permit.

You will need to read both the ordinance and the schedule (if any) very carefully. As noted, overlays are primarily a control over development (often including subdivision), but in some cases, they also control land use.

If a permit is not required, this is usually a bonus as, in most cases, you will not have to worry about whatever outcome the overlay is there to achieve. For example, if an overlay (eg a Special Building Overlay) is concerned with achieving flood-related outcomes (eg floor levels above a nominated flood level), but a permit is actually required under the overlay, then you will not have to worry as it is assumed that they will be met.

In other cases, however, an overlay may not trigger a permit but still be otherwise relevant. For example, the Development Plan Overlay (DPO) requires there to be an approved Development Plan in place prior (in most cases) to a permit being issued under another provision of the planning scheme (ie you need to worry about it before you apply for a permit). While it also does not trigger a permit requirement, the Development Contributions Plan Overlay, as the name suggests requires a specified contribution to be paid (usually via a planning permit condition).

If the overlay does trigger a permit or is otherwise relevant, read the Purpose of the overlay closely, and assess how relevant it would be to your proposal, including if changes would have to

made to proposal in light of those outcomes (eg if a significant building or tree would have to be retained under a Heritage Overlay or a Vegetation Protection Overlay respectively).

As there is a wide range of overlays, with a variety of different purposes, it is difficult to say exactly how any particular overlay might affect your proposal, but they can be no less important than the zone, particularly as they can also trigger the involvement of water, flood plain management authorities or the like.

Some issues arising from the overlay may in fact be insurmountable for a particular proposal.

9. Look at the particular provisions and general provisions sections of the planning scheme.

The Planning Report from Planning Schemes Online contains links to the zones, overlays and their schedules, but not the rest of the planning scheme, so you have to access policy sections separately. To do this go to Planning Schemes Online and then simply go to relevant planning schemes, which are both listed in alphabetical order and shown on a map⁸. If you are unsure about which planning scheme applies, it is shown on the top of the Planning Report in Planning Maps Online.

There are a number of particular provisions and general provisions, and if you are unfamiliar with them, you might want to tick them off the “contents” page of the planning scheme to ensure that you do not miss anything of relevance.

Particular provisions provide particular requirements for a wide range of land uses and developments. General provisions deal with the “house-keeping” of the planning scheme, as well as with existing use rights (Clause 63).

As with everything else in planning, the relevance of each varies quite a lot. Mostly they are used to trigger planning permits or otherwise provide guidance or assessment tools for specific issues that the state government (often based on public consultation) considers to be important⁹.

As there are now nearly fifty particular provisions alone, I suggest that you go through them very carefully. Ones that are commonly of relevance to people contemplating smaller land use or development proposals include Clauses 52.06 Car parking, 52.07 Loading and unloading of vehicles, 52.17 Native vegetation, 52.27 Licensed premises, 52.29 Land adjacent to a Road Zone, Category 1 etc, 52.34 Bicycle facilities, 52.35 Urban context report and design response for residential development of four or more storeys, 54 One dwelling on a lot, 55 Two or more dwellings on a lot and residential buildings, and 56 Residential subdivision .

If you are proposing permit-requiring residential development of up to three storeys, you must read the, somewhat extensive, Clauses 54 or 55 (whichever is relevant). While a detailed explanation of how to best meet these provisions would require a BPUR Town Planning Note of its own, I simply say that if you think that you should not have to meet any part of them you generally need to have a sound reason based on either neighbourhood character or local policy.

At this stage, you should be able to determine whether a planning permit is required to achieve your proposal. A permit may be required under multiple provisions of the planning scheme. You will then need to determine what state or local policies would reasonably arise from each permit trigger (ie the policy would have to have some real relevance to the particular permit trigger – eg

⁸ As stated, planning schemes are almost all based on a municipal area so that they simply have the same name as the council whose municipality they cover (eg Macedon Ranges Planning Scheme)

⁹ While a few provisions seem to be out of date (having been carried over from earlier planning schemes), most of it is both up-to-date and potentially extremely important to your particular proposal as they are what the state government wants

a policy to address noise from main roads would not generally apply where a permit is only required under an overlay that deals with flooding issues).

If a planning permit is not required, you are able to proceed with your proposal (some similar requirements may still apply under the building permit process).

10. Look at the state and local policy sections of the relevant planning scheme.

Again you might want to firstly check the contents page and tick off each policy as there is a large number of them.

State policy tends to be much more general in nature, whereas local policy is more specific, both in the land and the particular types of use or development that it applies to (eg some inner suburban planning scheme have local policies specific to development of more than four storeys, a matter that is addressed in terms of general principles only in state policy).

As a general (but by no means absolute) rule, state policy tends to be more supportive of new developments or land uses, whereas local policy tends to be much more restrictive (this is especially the case for new residential development).

State policy is the only relevant policy in some cases, eg there is a state policies on Tourism, Health facilities and Renewable energy, whereas there are no equivalent local policies in most planning schemes. In the absence of a local policy, the decision maker is likely to be heavily reliant on the relevant state policy, even if it only provides general principles.

Local policy is divided into two parts; Clause 21, known as the Municipal Strategic Statement or MSS and Clause 22 simply known as Local Planning Policies. The MSS is really intended to set out the outcomes sought by the council (eg what the council wants to achieve in a number of areas, how it has applied each zone or overlay etc), Clause 22 is the “pointy end” of the planning scheme, containing essentially local tools to assess proposals affecting particular land or of a particular type). However, this distinction has become a bit blurred over the last few years, with some MSSs now containing “Local Strategies” which operate like policies at Clause 22.

11. Seriously consider the significance of the local content as it is ultimately the (local) council that will be making a decision on your planning application¹⁰.

This section really explains why some land use or development proposals get council support (which usually means a planning permit) in some municipalities but not others. This is particularly so for people (and their designers) doing developments all over the place and I cannot emphasise it enough.

To determine site feasibility properly, you need to work out what is important to the relevant council, and also to recognise that what is important to a council is to a great extent also determined by both the nature of its local environment and the wishes of its local community.

Once you have considered the zones, any overlays, the schedules to the zones and overlays, the MSS (including the way in which the zones or overlays have been applied), and explicit local policies, you should be in a position to make a judgment on what is likely to be important to the council in determining any permit application that you might make.

There is a general rule in planning that the “specific” should prevail over the “general”. Amongst other things, if the relevant council has gone to the trouble of developing specific local content

¹⁰ While councils are far from infallible, they are the primary decision makers in statutory planning and VCAT will not necessarily agree with you – in appeals involving council refusals, councils and permit applicants each win about 50% of the time. It is however better to go to VCAT if the council’s decision making is entirely unreasonable or not based on its planning scheme

and then incorporating into its planning scheme, then it is also going to implement that local provision to achieve land use and development outcomes accordingly, for example:

- An important issue for potential developers that is often expressed through local policy is “Preferred character”, often set out in a “Neighbourhood character” or “Residential development” policy. This is most relevant to residential development in middle suburban areas, and really sets out the type of development that the council actually wants to see in its residential areas. These policies are sometimes a result of a community reaction to development that has occurred in the past and are thus often contrary to prevailing trends (this is why simply relying on the existence of nearby “precedents” can be problematic – ie if the council has specifically stated in local policy that it does not like a particular type of development).

Some councils even use local policy¹¹ to divide their Residential 1 Zone (in some cases this is done instead or as well by applying different zones) along the lines of nominated (usually three) categories of change, with name such as “Substantial change areas”, “Incremental change areas” and “Limited change areas”. This reflects the level of support that you can expect from the council for residential development in each area - specifically the intensity of development that the council will consider reasonable for a particular site, and, more importantly, how strictly it will apply the relevant requirements of Clauses 54 or 55.

- If the council has a Vegetation Protection Overlay over much of its municipality, requires larger than normal secluded private open space for residential development and has a Canopy Tree Protection policy (eg as in the Maroondah Planning Scheme), then it is reasonable to assume that this would be one of the more significant local issues that you would need to address and overcome in applying for a permit. This tends to be the case in the eastern suburbs of Melbourne, to a lesser extent in the northern and southern suburbs, and hardly at all in the western suburbs.
- If the council has extensive areas covered by the Heritage Overlay and a long heritage policy, then it is likely to see heritage protection as a key planning issue about which it is likely to take a very conservative view and put considerable resources into (eg into defending its heritage-related decisions at VCAT). As one might expect, these tend to be the municipalities covering the older urban areas of Melbourne and Victoria more generally, and especially where there is a widespread appreciation of heritage in the local community.

On the other hand, some councils appears to have no particular “ownership” of the issues arising from the state content of the planning schemes administered by them, other than to provide good general planning outcomes. In some cases, they will be more ready to compromise on these issues. In some cases, overlays can reflect the outcomes sought by a particular authority not the council per se. It is also noted that councils are generally much more explicit in their local content about what they do not want than what they would consider acceptable¹².

The key thing is to *determine what is important* to the council (or authority), as identified in its local content: as above, the application of zoning and overlays in the first instance, the way that the schedules have been written, the MSS, the local policies and, to also some extent though it is not technically part of the planning scheme, the information requirements that the council has.

¹¹ A good example is Clause 22.09 Residential Development & Neighbourhood Character Policy of the Greater Dandenong Planning Scheme

¹² Reflecting the intensity nature of existing development, inner suburban councils (eg Yarra, Stonnington,) have no apparent problems with new site coverages of well in excess of the general standard of 60%, in the R1Z but have little or nothing in their planning scheme to say so clearly; by contrast, some eastern or southern middle suburban councils (eg Glen Eira, Bayside) have varied the same standard downwards to 50% via the R1Z schedule and others have policies (eg Greater Dandenong) along the same lines (to its credit the Greater Dandenong policy does allow a 70% site coverage for its Substantial change areas)

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Once you have determined this, you should be in a position to determine whether: your particular proposal will be able to achieve what the council wants; you can modify the proposal to do so; or if the proposal would be simply wrong for the site. Don't try to put a square peg in a round hole, or at least be pragmatic and turn the square peg into a roundish peg.

12. Contact BPUR Town Planners via matt.gorman@bpur.com.au, (03) 9600 0363 or 0410 762 304 for any additional assistance, including lodgment/project management of permit applications and the provision of associated documentation (eg Rescode assessments).

More specifically, we provide cost effective and responsive professional advice (verbal and written), documentation (report and letter writing); and advocacy (at VCAT, panels and councils) regarding planning permit applications, planning appeals, development plans; and other planning and liquor licensing issues, for councils and other public authorities, builders and other small businesses, design and development professionals, including architects, designers, land surveyors, building surveyors, solicitors and other town planning consultants; and land owners.

As well as extensive experience in urban medium density housing under Rescode/Clause 54 or 55 (the bread and butter of consultant town planners), we also have significant expertise in:

- Rural residential development (including dwellings, sheds, dependent persons units etc) in the Farming Zone, the Rural Living Zone, the Rural Conservation Zone, the Rural Activity Zone, the Green Wedge Zone, the Green Wedge A Zone, and/or in the Wildfire/Bushfire Management Overlay, in proclaimed catchments (often covered by the Environmental Significance Overlay) and/or along the coast;
- Subdivision, including broadacre subdivision, subdivision of existing development, medium-sized residential infill subdivision (Clause 56 Residential subdivision) and rural subdivision;
- Development in smaller cities, towns, townships, and settlements, development in Heritage Overlays, industrial or warehouse use/development and advertising signs (Clause 52.05);
- Waiving or reduction of car parking requirements (Clause 52.06);
- Liquor licensing-related permit applications, including for new licensed premises (restaurants, cafes, hotels, taverns etc) and for increased hours, patrons or red line areas for existing licensed premises (Clause 52.27) and including Cumulative Impact Assessments pursuant to the "Swancom" decision (City of Yarra) or DPCD Practice Note 61;
- Residential and mixed use developments of four or more storeys (Clause 52.35);
- Potentially controversial and/or complex rural uses and developments, including dog keeping, intensive animal husbandry (broiler farms, piggeries etc), timber plantations, and native vegetation removal; and
- Other controversial and/or historically complicated permit applications requiring sensitive handling by an experienced town planner through the council and/or appeals process.



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