

11 November 2014

Notice Of Motion, Cr Leppert: Capital City Zone Rights

Motion

That the Future Melbourne Committee requests management to prepare a Planning Scheme Amendment which removes from the Schedules to the Capital City Zone the exemption from the notice requirements of Section 52(1)(a), (b) and (d) of the *Planning and Environment Act 1987* for planning applications which seek to demolish and/or construct a building (and related works).

Background

Schedules to the Capital City Zone “may specify that an application is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.”

For ease of explanation, this shall be described in this document as “exemption from notice and review requirements”.

The Schedules to the Capital City Zone which apply to the City of Melbourne, Schedules 1 to 4 (with a new schedule to be added if planning scheme amendment C196 City North is agreed to by the Minister for Planning), each allow for the exemption from notice and review requirements for applications which change the land use, subdivide land, construct an advertising sign, demolish a building, construct a building, carry out works, and so on.

To illustrate how these matters are set out in Schedules to the Capital City Zone, Schedule 3 (which applies to Southbank) is attached as an example. (**Attachment 1**)

Section 52(1) of the Act is also attached to show the notice requirements. (**Attachment 2**)

Section 52(1)(a) is the most important: it requires the responsible authority to give notice of an application to the owners and occupiers of properties adjoining the land to which the application applies. In the Capital City Zone at the moment, applications are exempt from this requirement to give notice to neighbouring properties.

This motion seeks to reinstate the requirement that notice be given to neighbouring properties for the most significant of planning applications: those which seek to demolish and/or construct a building.

This most basic of democratic principles – that those who are affected by a proposal should have the right to be aware of the proposal – will be reinstated should this motion be carried and the resulting planning scheme amendment be agreed.

Property owners and occupiers should have the right to know about proposals which affect them – and to communicate with the decision maker about their concerns.

A previous attempt to reinstate notice *and review* requirements in the Capital City Zone was defeated by the Future Melbourne Committee in April 2014. The argument was made by some at the time that the reinstatement of review requirements would slow development to an unacceptable extent, due to an anticipated increase in decisions being appealed at VCAT. Accordingly, this motion facilitates the reinstatement of notice requirements, but not review requirements, in order to seek a consensus amongst Councillors.

Agreement to this motion does not constitute agreement to any subsequent draft planning scheme amendment: this motion simply directs that such a draft planning scheme amendment be prepared by management. The usual opportunities for scrutiny of the amendment and scrutiny of consequences of the amendment would be available then.

Moved: Cr Leppert

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SCHEDULE 3 TO THE CAPITAL CITY ZONE

Shown on the planning scheme map as **CCZ3**.

SOUTHBANK

Purpose

- To develop Southbank as an extension of the central city, providing for a mix of commercial and residential land uses that complement the capital city function of the locality.
- To comfortably accommodate a residential and worker population in a pleasant neighbourhood where all public spaces are comfortable, bright and safe.
- To maintain and enhance the role of Southbank as a cultural and arts precinct.
- To develop Sturt Street as an arts and performance precinct with services and activities for local residents and visitors.
- To support art facilities and creative industry businesses along Sturt Street.
- To deliver local services and facilities within an approximate 400m walk from all residences.
- To provide uses at ground floor and upper podium floors to promote a visual link with, and facilitate the passive surveillance of, the public realm.
- To support commercial, retail and community uses along pedestrian corridors.
- To ensure that the mitigation of wind effects is incorporated into building design.

1.0

Table of uses

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Section 1 - Permit not required

Use	Condition
Accommodation (other than Corrective institution)	The ground floor of the building has a floor to ceiling height of at least 4 metres.
Any use permitted under the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958.	
Apiculture	Must meet the requirements of the Apiary Code of Practice, May 1997.
Child care centre	
Education centre	
Home occupation	
Informal outdoor recreation	
Mineral exploration	
Mining	Must meet the requirements of Clause 52.08-2.

Use	Condition
Minor sport and recreation facility	Must occur on the Yarra River or on land abutting the Yarra River which is managed by Melbourne Parks and Waterways or Parks Victoria. Must be licensed by Parks Victoria.
Minor utility installation	
Office	
Place of assembly (other than Amusement parlour and Nightclub)	
Pleasure boat facility	Must occur on the Yarra River or on land abutting the Yarra River which is managed by Melbourne Parks and Waterways or Parks Victoria. Must be licensed by Parks Victoria.
Railway	
Railway station	
Retail premises (other than Adult sex bookshop, Department store, Hotel, and Tavern)	
Road	
Search for stone	Must not be costeaning or bulk sampling.
Tramway	
Any other use not in Section 3	A use conducted by or on behalf of Melbourne Parks and Waterways or Parks Victoria under the Water Industry Act 1994, the Water Act 1989, the Marine Act, the Port of Melbourne Authority Act 1958, the Parks Victoria Act 1998 or the Crown Land (Reserves) Act 1978.

Section 2 - Permit required

Use	Condition
Adult sex bookshop	
Amusement parlour	
Car park	Must meet the requirements of Clause 52.06.
Commercial Car Park	
Corrective institution	
Department store	
Hotel	
Industry	Must not be a purpose listed in the table to Clause 52.10.
Leisure and recreation (other than Informal outdoor recreation)	
Mineral, stone, or soil extraction (other than Extractive industry, Mineral exploration, Mining, and Search for stone)	
Nightclub	
Tavern	
Utility installation (other than Minor	

Use	Condition
utility installation)	
Warehouse (other than Freezing and cool storage, and Liquid fuel depot)	
Any other use not in Section 1 or 3	

Section 3 - Prohibited

Use
Cold store
Extractive industry
Freezing and cool storage
Liquid fuel depot

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Subdivision

Exemption from notice and review

An application to subdivide land is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

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Buildings and works

Permit Requirement

A permit is not required for:

- Buildings or works carried out by or on behalf of Melbourne Parks and Waterways or Parks Victoria under the Water Industry Act 1994, the Water Act 1989, the Marine Act, the Port of Melbourne Authority Act 1958, the Parks Victoria Act 1998 or the Crown Land (Reserves) Act 1978.
- Buildings or works for Railway purposes.
- Alterations to a building authorised under the Heritage Act, provided the works do not alter the existing building envelope or floor area.
- Footpath vehicle crossovers provided they are constructed to the satisfaction of the responsible authority.
- Bus and tram shelters required for public purposes by or for the Crown or a public authority in accordance with plans and siting to the satisfaction of the responsible authority.
- Decorations, gardens and planting required for public purposes by or for the Crown, a public authority or the City of Melbourne.
- Street furniture.
- A work of art, statue, fountain or similar civic works required for public purposes by or for the Crown, a public authority or the City of Melbourne.
- Buildings or works or uses on public land for which a current permit exists under a City of Melbourne local law.

- The erection of information booths and kiosks required for public purposes by or for the Crown, a public authority or the City of Melbourne.
- Traffic control works required by or for the Crown, a public authority or the City of Melbourne.
- The construction, or modification, of a waste pipe, flue, vent, duct, exhaust fan, air conditioning plant, lift motor room, skylight, security camera, street heater or similar minor works provided they are to the satisfaction of the responsible authority.
- A flagpole.
- A modification to the shop front window or entranceway of a building to the satisfaction of the responsible authority having regard to the architectural character of the building.
- An addition or modification to a verandah, awning, sunblind or canopy of a building to the satisfaction of the responsible authority.
- The painting, plastering and external finishing of a building or works to the satisfaction of the responsible authority.
- Changes to glazing of existing windows to not more than 15% reflectivity.
- External works to provide disabled access that complies with all legislative requirements to the satisfaction of the responsible authority.

Application Requirements

An application for permit must be accompanied by a written urban context report documenting the key planning influences on the development and how it relates to its surroundings. The urban context report must identify the development opportunities and constraints, and document the effect of the development, as appropriate, in terms of:

- State Planning Policy Framework and the Local Planning Policy Framework, zone and overlay objectives.
- Built form and character of adjacent and nearby buildings.
- Heritage character of adjacent and nearby heritage places.
- Microclimate, including sunlight, daylight and wind effects on streets and other public spaces.
- Energy efficiency and waste management.
- Ground floor street frontages, including visual impacts and pedestrian safety.
- Public infrastructure, including reticulated services, traffic and car parking impact.
- Vistas.

An application to construct a building or to construct or carry out works must include, as appropriate, upgrading of adjacent footpaths or laneways to the satisfaction of the responsible authority.

An application for a permit to construct or carry out works for development of a building listed in the Heritage Overlay must be accompanied by a conservation analysis and management plan in accordance with the principles of the Australian ICOMOS Charter for the Conservation of Places of Cultural Significance 1992 (The Burra Charter) to the satisfaction of the responsible authority.

An Application to construct a building or to construct or carry out works must be accompanied by a Wind Analysis which must show how the proposal meets the following requirements:

- Developments affected by Schedule 1 to the Design and Development Overlay (Active Street Frontages – Capital City Zone) should be designed to be generally acceptable for stationary long term wind exposure (where the peak gust speed during the hourly average with a probability of exceedence of 0.1% in any 22.5° wind direction sector must not exceed 10 ms⁻¹).
- All other areas should be designed to be generally acceptable for short term wind exposure (where the peak gust speed during the hourly average with a probability of exceedence of 0.1% in any 22.5° wind direction sector must not exceed 13ms⁻¹). However, if it can be demonstrated that the street frontage or trafficable area is only likely to be used as a thoroughfare for the life of the development, the building interface should be designed to be generally acceptable for walking (where the peak gust speed during the hourly average with a probability of exceedence of 0.1% in any 22.5° wind direction sector must not exceed 16ms⁻¹).
- Developments should not rely on street trees for wind protection.

An application to construct a building or to construct or carry out works for a residential use must be accompanied by an Acoustic Assessment which must show how the proposal meets the following requirements:

- Habitable rooms of new dwellings adjacent to high levels of external noise should be designed to limit internal noise levels to a maximum of 45dB in accordance with relevant Australian Standards for acoustic control.

Exemption from notice and review

An application to construct a building or construct or carry out works for a use in Section 1 of Clause 37.04-1 is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

Decision guidelines

Before deciding on a permit application under this schedule, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The comments and requirements of relevant authorities.
- The ability for pedestrians, bicycles and vehicles to move within and through the area.
- The adequacy of car parking provision and loading bays.
- The adequacy of vehicle entry and egress.
- The impact the proposal will have on the amenity of existing and future development in the locality.
- The suitability of land proposed for public use.
- The provision of landscaping.
- The pedestrian comfort and the amenity of public places in terms of the potential for ground-level wind
- Whether the building design at street level provides for active street frontages, pedestrian engagement and weather protection.
- The impact on the amenity of any dwellings on adjacent sites.
- The development potential of adjacent sites, and whether this will cause an unreasonable loss of amenity to the subject site.

- Waste management.
- The ability to establish a visual relationship between occupants of upper floors and pedestrians, and better surveillance of the street by developing the first five levels of buildings with a “casing” of dwellings or offices or other design mechanisms.
- The impact the proposal will have on Queensbridge Square or other public open spaces in terms of amenity and overshadowing.
- The impact the proposal will have on street amenity if buildings are not constructed to the street boundary at ground level.
- The impact the proposal will have on street amenity if on-site parking occupies more than 20% of the length of the street frontages at ground level and in the first five levels of the building.

A permit and prior approval for the redevelopment of the site are required to demolish or remove a building or works.

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Demolition or Removal of Buildings

A permit is required to demolish or remove a building or works. This does not include:

- Demolition or removal of temporary structures.
- Demolition ordered or undertaken by the responsible authority in accordance with the relevant legislation and/or local law.

Before deciding on an application to demolish or remove a building, the responsible authority may require an agreement pursuant to Section 173 of the Planning and Environment Act 1987 between the landowner and the responsible authority requiring, as appropriate:

- Temporary works on the vacant site should it remain vacant for 6 months after completion of the demolition.
- Temporary works on the vacant site where demolition or construction activity has ceased for 6 months, or an aggregate of 6 months, after commencement of the construction.

Temporary works must be constructed to the satisfaction of the responsible authority.

Temporary works may include:

- The construction of temporary buildings for short-term retail or commercial use. Such structures shall include the provision of an active street frontage.
- Landscaping of the site for the purpose of public recreation and open space.

Exemption from notice and review

An application to demolish or remove a building or works is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act

Decision Guidelines

Before deciding on a permit application for demolition or removal of buildings, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

- Whether the demolition or removal of buildings gives effect to a permit or prior approval for the redevelopment of land.
- Whether the demolition or removal of buildings is required for environmental remediation of contaminated land.
- The provision of temporary works or landscaping to avoid vacant sites in perpetuity.

5.0

Advertising signs

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A permit is required to erect an advertising sign, except for:

- Advertising signs exempted by Clause 52.05-4
- An under-verandah business sign if:
 - It does not exceed 2.5 metres measured horizontally, 0.5 metres vertically and 0.3 metres between the faces of the sign;
 - It is located between 2.7 metres and 3.5 metres above ground level and perpendicular to the building facade; and
 - It does not contain any animation or intermittent lighting.
- A ground floor business sign cantilevered from a building if:
 - It does not exceed 0.84 metres measured horizontally, 0.61 metres vertically and 0.3 metres between the faces of the sign;
 - It is located between 2.7 metres and 3.5 metres above ground level and perpendicular to the building facade; and
 - It does not contain any animation or intermittent lighting.
- A window display.
- A non-illuminated sign on a verandah fascia, provided no part of the sign protrudes above or below the fascia.
- Renewal or replacement of an existing internally illuminated business identification sign.

Exemption from notice and review

An application to erect or construct or carry out works for an advertising sign, is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

PLANNING AND ENVIRONMENT ACT 1987 - SECT 52

Notice of application

(1) Unless the responsible authority requires the applicant to give notice, the responsible authority must give notice of an application in a prescribed form—

(a) to the [owners](#) (except persons entitled to be registered under the [Transfer of Land Act 1958](#) as proprietor of an estate in fee simple) and [occupiers](#) of allotments or lots adjoining the [land](#) to which the application applies unless the responsible authority is satisfied that the grant of the [permit](#) would not cause material detriment to any person; and

(b) to a municipal council, if the application applies to or may materially affect [land](#) within its municipal district; and

(c) to any person to whom the planning scheme requires it to give notice; and

(ca) to the [owners](#) (except persons entitled to be registered under the [Transfer of Land Act 1958](#) as proprietor of an estate in fee simple) and [occupiers](#) of [land](#) benefited by a [registered restrictive covenant](#), if anything authorised by the [permit](#) would result in a breach of the covenant; and

(cb) to the [owners](#) (except persons entitled to be registered under the [Transfer of Land Act 1958](#) as proprietor of an estate in fee simple) and [occupiers](#) of [land](#) benefited by a [registered restrictive covenant](#), if the application is to remove or vary the covenant; and

(d) to any other persons, if the responsible authority considers that the grant of the [permit](#) may cause material detriment to them.