

APPENDIX A

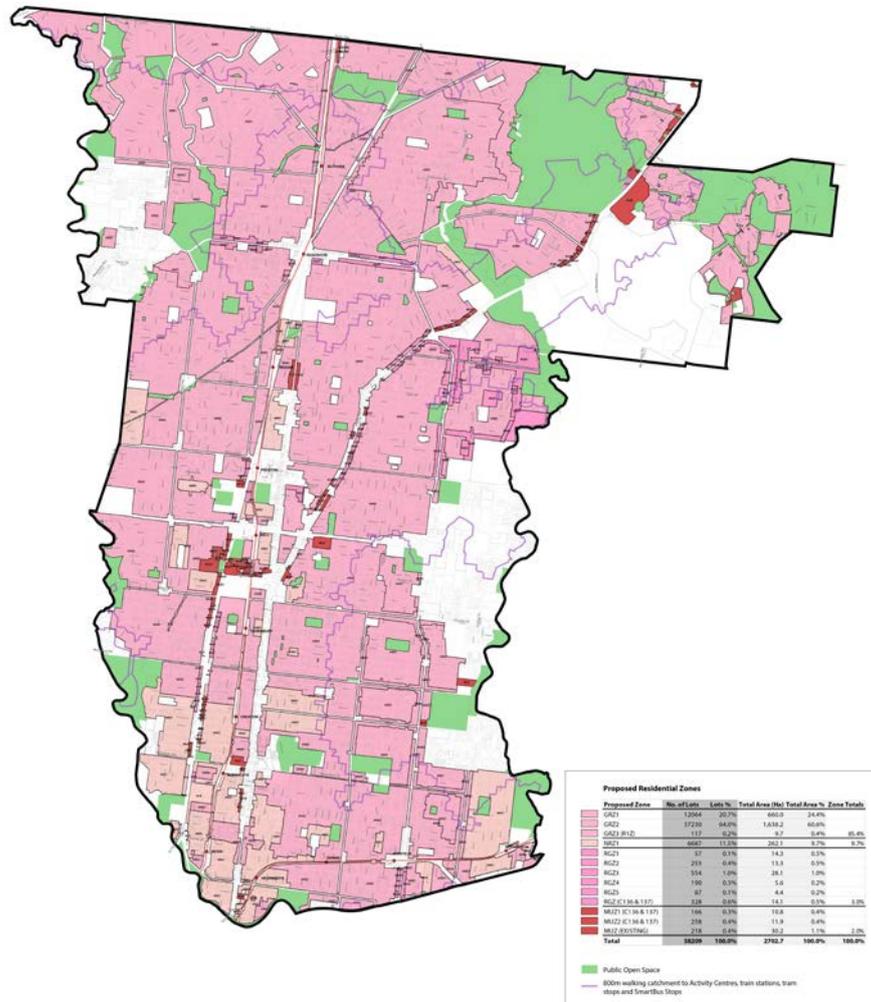
City of Darebin Submission to the Managing Residential Development Advisory Committee

1. Introduction

Darebin City Council (Council) is pleased to make the following submission to the Managing Residential Development Advisory Committee (MRDAC). The submission responds to the Terms of Reference of the MRDAC and details Darebin’s experience of the new residential zones. Council looks forward to presenting its case at a public hearing.

2. The residential zones and housing supply in Darebin

Darebin has implemented the Neighbourhood Residential Zone (NRZ), General Residential Zone (GRZ) and Residential Growth Zone (RGZ) into the planning scheme, as shown in Figure 1 below.



The breakdown of the zones in Darebin is currently: 9.7 per cent NRZ, 85.4 per cent GRZ and 3.0 per cent RGZ.

The application of the zones was originally informed by the Darebin Housing Strategy 2013-2033 (DHS). The DHS was developed to guide housing development within the municipality. It establishes areas of 'minimal', 'incremental' and 'substantial' housing change, based on locational attributes and neighbourhood character. These three housing change areas roughly translate to the NRZ, GRZ and RGZ.

The DHS forecasts a need for an additional 13,600 dwellings in Darebin by 2031. This figure was based on an increase in population of 30,300 over the same time period. However, it is noted that the most recent Victoria in Future¹ (ViF) projections have been updated and indicate that Darebin's population will now grow by approximately 46,000 people by 2031, generating a need for an additional 20,200 dwellings. Whilst Council acknowledges that an additional 7000 dwellings will be required to accommodate the most recent ViF projection, Council still retains adequate housing supply particularly within its Activity Centres, redundant industrial land and urban renewal areas, including the Northland Urban Renewal Precinct.

In order to clearly identify locations where significant growth should be directed, Council prepared Amendment C147 which introduced areas of RGZ throughout the municipality. While the RGZ has been in place for only a short time in Darebin, it is anticipated that greater numbers of planning applications will be received as the market responds to the new zoning controls².

The Housing and Population Report produced by DELWP as part of Amendment C144³ (the Amendment that applied Stage 1 of the new residential zones) indicated that the application of the zones would not significantly impact upon housing supply within Darebin. This was based on the proposed application of the NRZ at the time of 36 per cent.

3. The residential zones implementation process

This section details the process through which the residential zones were implemented in Darebin, and the guidance that was made available to Council in applying the zones. The implications for this on a state level are discussed below.

Residential Zones Standing Advisory Committee (RZSAC) Process

Council participated in Stages 1 and 2 of the RZSAC process and each of Council's draft amendments were supported. The RZSAC process had numerous benefits, including:

- Ensuring the proposals of all participating Councils were reviewed according to the same set of criteria.
- Providing an expedited process for Councils to participate in.
- Establishing standards for notification.

¹ Available at http://www.delwp.vic.gov.au/_data/assets/pdf_file/0010/308269/Darebin_ViF2015_One_Page_Profile.pdf

² A trend that was noted in the MRDCA Overarching Issues Report.

³ Available at <http://yoursaydarebin.com.au/new-residential-zones-draft-amendment-c144/documents/12993/download>

- Analysis of the implications of the application of the zones on housing supply, via the Housing and Population Reports produced by DELWP (formerly DTPLI).
- Ability for the RZSAC to have an overarching view of the residential zones and their implementation.

Council is particularly pleased with the support it received for Amendment C147, which implemented the Residential Growth Zone (RGZ) and Design and Development Overlays (DDOs). Council sought to introduce a new apartment typology via Amendment C147, to ensure that high density development provides positive urban design and internal amenity outcomes. This typology was supported by the RZSAC, which noted “...the Garden Apartment and Urban Apartment typologies are a commendable attempt by Council to ensure that the bar is raised in terms of the standard of future development in the areas it has identified for substantial housing change.”

However, Council submits that the RZSAC process presented a number of fundamental issues, including:

- The RZSAC was undermined by decisions made before and after the process commenced. This includes the approval of high proportions of NRZ in municipalities such as Glen Eira and Boroondara (before the process) and Yarra and Moreland (after the process).
- Inconsistencies around recommendations of RZSAC became clear as some of its recommendations were upheld whilst others were not.
- Although RZSAC did a reasonable job within the parameters given to them, the process was ultimately rushed and as a consequence, avoidable errors and inconsistent outcomes inevitably occurred.
- Perceptions within the community that the process had become politicised and as a result, the residential zones were not fairly applied across metropolitan municipalities. Darebin currently experiences comparably limited application of the NRZ at 9.3%, when compared with Moreland, a neighbouring municipality with similar access to public transport and building typology (residential character), incorporating approximately 62% NRZ. Since the approval of Moreland’s NRZ in May 2015, Darebin has been subjected to significantly greater pressure for development with new housing typologies being sought that are not in alignment with the strategic work undertaken to protect residential neighbourhood character.
- Council has been receiving increasing numbers of planning applications that propose a typology that is out of character with the existing neighbourhood. This includes proposals that rely on first floor balconies for secluded private open space. These applications seemingly consider a yield outcome as their primary response and do not appropriately consider the site’s context. Many areas that were suitable candidates for protection are having their character altered through an influx of development activity since early 2015.

- Darebin is entitled to argue that its community has been let down as a result of it following the Department's direction on applying the new residential zones and by cooperating with due process throughout, as opposed to mounting a political lead solution to the allocation of the new residential zones.
- This level of inconsistency raises issues of transparency and equity, and creates confusion and concern among Councils and their communities.
- The process was completed in a very short timeframe, meaning that Councils and Committee members were under pressure to finalise documentation. The eventual release of reports and the gazettal of amendments were then significantly delayed.

As noted in their Overarching Issues Report, the RZSAC adopted a 'cautious' approach to the application of the zones, the NRZ in particular. This contrasts sharply with the approach taken to the application of the NRZ to municipalities outside of the RZSAC process.

Practice Note 78 and Ministerial Direction 16

These documents were intended to guide the application of the new residential zones. Council submits that these two documents provided conflicting advice on how the zones should be applied, and created an expectation that a certain amount of NRZ would be achieved in each municipality.

Ministerial Direction 16 established a 50 per cent target for the application of the NRZ across metropolitan Melbourne. This target was derived from *Plan Melbourne*, and it has caused significant confusion within the community. The *Plan Melbourne Refresh* provides some commentary on this approach:

"The principle of applying a zone according to a percentage is...very unconventional and raises concerns. Land use zones are traditionally applied to land according to strategic policy and the attributes of land, and not according to blanket percentages."

While it is commendable that this matter is being addressed, the process of implementing the residential zones is now largely complete, and was influenced by this 50 per cent target. It has also established an expectation for the community that such a target will be achieved. This issue is discussed greater detail below.

In contrast to the Ministerial Direction, Practice Note 78 (Applying the Residential Zones) provided detailed criteria for the application of the new zones. However, these criteria proved to be problematic for Councils and the RZSAC in applying the residential zones. In particular, the Practice Note was not clear on weighting of criteria and was therefore inconsistently interpreted and applied. An example of this is the case for the accessibility and intactness criteria. According to Table 2 of the Practice Note, both the GRZ and NRZ are not applicable in areas that have good access to public transport, employment, shopping and community services. This contradicts a purpose of the GRZ ("To provide a diversity of housing types and moderate housing growth in locations offering good access to services and transport"), and creates confusion about where the GRZ and RGZ should be applied.

Whilst Council understands that the criteria are to be viewed holistically and on a case by case basis accessibility has been a major concern of the RZSAC⁴ in applying the residential zones.

Communication and community perception

The application of the residential zones has received significant media attention and community interest. The ultimate application of the zones has resulted in a perception of 'winners and losers', with some areas accommodating growth while others are better protected from inappropriate density. The reasons for the discrepancies in the application of the zones have not been clearly articulated, and this has further fuelled discontent and confusion amongst the community.

In particular, the former Minister for Planning had previously advised our former Mayor, that he would support a 50 per cent allocation of the NRZ in Darebin. This communication has resulted in unrealistic expectations for our Councillors. The 50 per cent NRZ target established in *Plan Melbourne* has also created community expectations that have not been met. As noted above, establishing a zone quota is not a typical planning approach, and the quota in Darebin in particular, has not been reached. This has resulted in a perception of certain areas not being allocated their 'share' of NRZ coverage.

A further issue is whether the zones are achieving the outcome that is expected by the community. As noted in the MRDAC Overarching State of Play Report, the application of the NRZ has, to date, had limited impact on the supply of housing. Because the NRZ has been generally applied to areas where low change was encouraged in existing planning policy (in Darebin for example, the NRZ applies predominantly to areas affected by a Heritage Overlay), the impact of the zone has been minimal⁵.

Council officers understand anecdotally that there is a community perception that the NRZ will protect the preferred character of the area by preventing demolition, which is not the case. If the NRZ is not further limiting housing supply (rather it is mandating existing low change areas), and it is not preventing the demolition of dwellings that contribute to the preferred neighbourhood character, then it is questionable whether the zone is achieving what is expected by the community. This issue has been poorly communicated and hidden in political rhetoric about what the Neighbourhood Residential Zone is expected to achieve.

Importantly, the rhetoric surrounding the new residential zones has focused primarily on 'protecting' suburbs from 'inappropriate development', without delving into the complexities and necessities of housing supply.

Infill development is an essential component of housing supply, and is broadly accepted as a more preferable option than urban fringe development. However, current infill development occurs in an ad-hoc and uncoordinated manner, and the cumulative impact is not considered.

This is an issue that has been acknowledged in the *Plan Melbourne Refresh*, and is something that models such as 'greyfield renewal'⁶ are seeking to address.

⁴ Refer to Darebin C144 report.

⁵ It is acknowledged that the zones have been in place for only a limited time and their impact may not be fully understood.

⁶ Greyfield renewal refers to planned infill development in areas where building stock is nearing the end of its physical life and land values make development attractive. It seeks to provide a framework for redevelopment to ensure more sustainable outcomes are achieved.

The implementation of the residential zones presented an opportunity to facilitate a meaningful discussion about the nature of infill development in Melbourne and how it can be improved; an opportunity that was missed. Rather, infill development was painted as 'inappropriate' and protecting existing suburbs was presented as the paramount concern.

4. Review of the current application of the zones that allow for residential development in the context of managing Melbourne and Victoria's growth in a sustainable manner and improving housing affordability

Managing housing growth

Council submits that the principle of identifying areas for intensification and preservation is a sound approach to managing housing growth in a sustainable manner. The RGZ in particular will contribute positively to housing supply, by sending a clear message about where higher density development should go, and locating it in areas that are proximate to transport and services.

However, the purpose and impact of the NRZ on housing growth may take some time to understand. It is noted that the NRZ appears to have been applied to some areas across metropolitan Melbourne that are well-located and could accommodate a higher proportion of housing growth, as directed by PN78. Infill development is generally seen as more sustainable than growth at the urban fringe, and 'locking up' large parcels of land that could be developed may undermine the broader sustainability objectives of State and Local governments.

The GRZ remains the most widespread residential zone in Melbourne. It delivers the majority of housing supply in Darebin, and a large portion of metropolitan housing supply. As noted above, the GRZ delivers infill development that is uncoordinated and in many cases across metropolitan Melbourne, there are no particular design guidelines or standards which would enhance the built environment.

Further to this, given the size of many infill development sites, environmentally sustainable design (ESD) requirements are generally not imposed. Council is attempting to address this through the implementation of an ESD local policy, which will require developments of three or more dwellings to comply with a standard set of ESD requirements. Further investigation of how the GRZ can deliver more sustainable housing is required.

Improving housing affordability

The impact of the zones on housing affordability may take some time to understand. Housing affordability is difficult to define and without any specific direction from State government, the market will continue to push lower income earners further away from important social infrastructure and services. It remains to be seen whether, on balance, the new residential zones will lead to improvements in housing supply and affordability. At this stage it appears to be doing little to contribute to better levels of affordability and requires clear and urgent action from State and Federal Government to provide better funding and policy platforms to avoid the continued forcing out of low income households from well serviced transport rich locations.

As noted in the MRDAC Overarching State of Play Report, the RGZ has provided some certainty to developers about where higher density developments can be accommodated, however escalating property values suggest this is of little benefit to low income earners.

Notwithstanding the above, Council has given consideration as to how the new zones could be utilised to directly influence the supply of 'affordable' housing. The review of the zones' drafting presents an opportunity to consider exemptions for social housing projects and trial inclusionary zoning, particularly in the RGZ. Providing affordable housing projects is difficult for Council to achieve without the support and direction of State and Federal governments to enable the community housing sector to finance spot purchases. This is discussed in further detail in section 5 below.

The ongoing monitoring of the zones should also analyse changes to housing prices. The application of the zones may result in certain areas becoming more or less affordable; this should be considered in the overall application of the zones and their ongoing monitoring.

The role of the GRZ in housing supply

The GRZ was intended to strike a balance between encouraging moderate housing growth and achieving a greater emphasis on neighbourhood character. As outlined below, the RZSAC has clearly stated, that the GRZ should place a greater emphasis on neighbourhood character than what was previously contemplated under the R1Z. However, in Darebin's experience, a clear distinction between the NRZ, GRZ and the RGZ has not been made. The GRZ is now largely viewed by applicants in the context of the RGZ, whereas the NRZ appears to be the zone that focuses on neighbourhood character.

In this context, the GRZ is perceived as a 'neutral' zone. Despite the inclusion of neighbourhood character objectives in the purpose of the GRZ, it is not consistently delivering upon this objective.

Furthermore, the NRZ and RGZ have clear direction about the type of scale and form of development that is acceptable/ encouraged. However, the GRZ is less clear in its direction, and covers the broad range of building typologies and densities that exist somewhere between the NRZ and RGZ.

As highlighted above, the RZSAC considered these issues in their overarching issues report, and stated the following:

"The Committee comments that the purposes of the Zone are clear - that decisions about design in this Zone must respect neighbourhood character and implement neighbourhood character policy and guidelines. This strengthens the role of neighbourhood character from that provided for in the existing R1Z and R3Z. The concerns of some submitters that use of the GRZ will lead to increased development beyond what occurs in a R1Z appear unfounded."

The RZSAC's comments are problematic for a number of reasons. Firstly, it has been difficult to ensure development in the GRZ makes a positive contribution to neighbourhoods. The inability for Councils to implement neighbourhood character objectives through the R1Z is likely to have contributed to the introduction of the new residential zones. Secondly, in implementing the new zones, the GRZ has been described as a 'translation' of the R1Z, thus the intention to focus on neighbourhood character has not been communicated. Thirdly, there are numerous interpretations that can be made of the zone's purpose; therefore, the weight given to neighbourhood character can vary. Recent VCAT decisions provide an illustration of this point.

In the VCAT case ‘2bscene Design Pty Ltd v Boroondara CC’ [VCAT 1138], Member Davies found that:

“I acknowledge that the purpose of the NRZ includes ‘To implement neighbourhood character policy and adopted neighbourhood character guidelines’.

That is also a purpose of the General Residential Zone. However, I do not agree...that the status of the [Neighbourhood Character Policy] is somehow elevated. It continues to be a policy reference listed in clause 22.07-4. Although the Neighbourhood Character Policy in clause 22.07 is now expressly referred to in the purpose of the NRZ, it was previously invoked in the broad purpose of the Residential 1 Zone to implement local planning policies.”

Conversely, in 360 New Street Brighton Pty Ltd v Bayside CC [VCAT 1322], the tribunal stated:

“Compared with the former Residential 1 Zone, the language of the purpose of the Neighbourhood Residential Zone with respect to neighbourhood character has raised the obligation to respond positively to, and implement, the preferred character.”

Council submits that the GRZ is not delivering outcomes that are more respectful of neighbourhood character than those in the R1Z. The GRZ applies to the majority of residential land in Darebin, and across metropolitan Melbourne. Council submits that the purpose statement regarding implementing neighbourhood character policy has duplicated provisions that already existed within the scheme, and is subject to interpretation.

Table 1: Comparison of zone purposes

	R1Z	GRZ	NRZ
Purpose	<i>To encourage residential development that respects neighbourhood character</i>	<i>To encourage development that respects the neighbourhood character of the area</i> <i>To implement neighbourhood character policy and adopted neighbourhood character guidelines</i>	<i>To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics</i> <i>To implement neighbourhood character policy and adopted neighbourhood character guidelines</i>

5. Improvements to the residential zones and associated tools

This section details Council’s suggested improvements to the residential zones. It is noted that the new residential zones have been in place for only a short period, and Council’s experience in implementing the NRZ and RGZ is limited (these zones also apply to a small percentage of the municipality).

Neighbourhood Residential Zone

Council suggests the following changes to the NRZ:

- Include consideration of neighbourhood character in decision guidelines.

The emphasis on neighbourhood character should be more explicit within the NRZ. The zone purpose is open to interpretation.

- Exempt social housing from the maximum number of dwellings per lot (and maintain 2 storey maximum height)

This will assist in facilitating social housing supply and is aligned with options discussed in the Plan Melbourne Refresh to provide exemptions for social housing in the planning scheme.

- Amending loopholes that enable multiple lot subdivision.

Currently, subdivision permits can be issued that would enable multiple dwellings to be constructed in the NRZ. Limiting this will ensure that the maximum number of dwellings is not exceeded.

- Including a no net dwelling loss for existing multi-unit developments.

Where a lot currently accommodates multiple dwellings, redevelopment should enable the same number of dwellings to be constructed. Development should remain in keeping with the neighbourhood character.

Council is supportive of the changes noted by the MRDAC in relation to the NRZ, including implementing a 'sliding scale' for larger sites.

General Residential Zone

The following changes are recommended for the GRZ. As noted above, the GRZ applies to the majority of land within Darebin and provides Council with limited control over built form outcomes.

- Provide guidance as to what 'moderate housing growth' is and how it compares to the scale of growth in the NRZ and RGZ.

The scale of change in the GRZ can vary greatly. Further guidance should be provided as to the scale of change that is anticipated in the GRZ. This is particularly important given the perception of the GRZ as a 'neutral' zone with lesser focus on neighbourhood character. Council has attempted to address this via modified schedules to the GRZ.

Greater clarity and improvement of built form design throughout Darebin and metropolitan Melbourne could be achieved by incorporating a standard set of design guidelines, rather than achieving the 'cookie cutter' outcomes which are often encouraged by the numerical provisions of ResCode. For medium density development, good urban design outcomes are considered a 'good to have' rather than a mandatory starting point for designers. Specific recommendations to improve ResCode are detailed below.

- Clarify the role and weighting of neighbourhood character considerations in the GRZ.

This is related to the point above. While the GRZ includes additional neighbourhood character objectives, Council's experience is that these have not resulted in greater weight being given to neighbourhood character outcomes.

- Undertake investigation into how development in the GRZ can be better coordinated and deliver more sustainable outcomes.

As noted above, options including greyfield renewal should be investigated to ensure the GRZ delivers housing outcomes that are sustainable and better coordinated.

Residential Growth Zone

The following changes are recommended for the RGZ.

- Remove reference to four storeys in the purpose of the RGZ

The zone's purpose should not refer to a specific height, particularly where this can be exceeded in the schedule to the zone. This sends conflicting messages about the scale of development that is being encouraged.

- Consider how the schedule to the RGZ can be modified to enable additional requirements to be included.

Council has applied the Design and Development Overlays (DDOs) to land that is within the RGZ, and understands that this is common practice. There is a need to provide additional guidance in the RGZ, given the scale of development that is encouraged. The schedule could be modified to enable additional guidance to be included, and reduce the need for applying a DDO.

- Consider inclusion of social housing requirements in the RGZ.

The RGZ could be used as a de facto inclusionary zone. Developments above a certain size could be required to provide a certain percentage of dwelling provision as social housing. Again, this aligns with options presented in *Plan Melbourne Refresh* to trial inclusionary zoning and to facilitate social housing supply through the planning system.

Clause 54 and 55 (ResCode)

A number of changes to ResCode are suggested as part of this review. Council submits that the new residential zones have altered the context in which ResCode operates, and that it should be updated accordingly. ResCode was developed with a very different development typology context in mind.

The following changes are recommended:

- Refinements to standards and objectives to relate to each of the new residential zones.

Council submits that the objectives for development will differ between each of the residential zones. It is recommended that the standards and objectives be amended so that the desired outcomes of the NRZ, GRZ and RGZ are clearly differentiated and greater built form certainty in particular is provided within the NRZ and GRZ. These changes will assist in protecting the integrity of the zoning controls and ensures that the development outcomes are clearly understood within each zoning control.

- Greater emphasis on high quality internal spaces and functional layouts, particularly in the RGZ.

Objectives and standards for internal space and layout should be included in ResCode. This will encourage more sustainable and liveable development in context.

- Allowance for creative responses to overlooking requirements. Screening measures can have significant impact on the liveability and amenity of new developments, both internally and externally. While it is important that the privacy of existing residents is protected, Council submits that more flexible and creative response to overlooking should be encouraged.

- Allowance for variation to side and rear setbacks based on context.

Amending Standard B17 to reflect different contexts will assist Councils in achieving greater neighbourhood character outcomes. Standard B17 should differentiate between those parts of the subject site adjacent to buildings and those parts of the subject site adjacent to secluded private open space.

- Modify open space requirements to ensure that balconies are provided (as the sole secluded private open space) only in locations proximate to public transport and services (eg in RGZ, parts of GRZ only).

As an example of '1 size does not fit all', Council submits that balconies are not always an appropriate open space response. Standard B28 allows for any development to rely on the provision of 8sqm balconies and 10sqm roof top areas to achieve the secluded private open space provision. Reverse living outside of residential growth areas in particular, is not a desired outcome as it reduces the requirements for open space at ground floor level, which in many cases is contrary to the character of the area and purposes of the zone, often resulting in severe screening, poor internal amenity, increased mass and bulk, poor transitions to adjacent dwellings and borrowed amenity outcomes. Decision guidelines should reference the need to be in proximity to a Principal or Major Activity Centres and in proximity to high quality public open space, clearly defining the definition of 'proximity'. Council has attempted to address this through modifying the schedule to the GRZ and requiring a certain area of secluded private open space.

Council submits that, as well as modifications to ResCode, further guidance is needed regarding higher density development. This is something that is acknowledged and initiatives such as *Better Apartments* and the Central City Built Form Review are attempting to address. Council supports such initiatives and looks forward to the outcomes of these processes.

6. Monitoring residential development over time

Council is supportive of ongoing monitoring of the new zones' implementation and their impact upon residential development. Council is currently considering methods for monitoring and evaluating the new residential zones within Darebin.

As well as monitoring, evaluation of the zones should also take place. This should address whether the zones are meeting their objectives, whether they are providing greater certainty for the community, and whether they are meeting community expectations.

This monitoring and evaluation should inform ongoing improvements to the drafting and application of the zones.

7. A model methodology for preparing planning scheme amendments and the level of justification needed for planning scheme amendments

Council is supportive of greater guidance for the preparation of planning scheme amendments to implement the new residential zones. However, it is noted that many Councils have already implemented their zones and, as noted in the *Plan Melbourne Refresh*, it appears unlikely that the application of the zones will change significantly.

Council is supportive of guidance as to the level of evidence and justification that is needed when preparing planning scheme amendments. This needs to be considered in the context of existing guidance on the application of the zones.

Notwithstanding the above, Council would propose that the following matters be addressed in a model methodology in order to provide an equitable and balanced application of residential zones across metropolitan Melbourne:

- Specific criteria for applying the residential zones and a method for identifying where the zones should be applied;
- Consultation approach and how the outcomes of consultation can be used, particularly where they conflict with Practice Note directions; and
- Key messages and communications protocols that ensure the purposes of the zones are communicated consistently across the state.

8. Conclusion

Planning seeks to strike a balance between many competing objectives. These include the need to facilitate housing supply, protect neighbourhood character and native vegetation, and to intensify areas that are proximate to public transport and services. The implementation of the residential zones has been an attempt to identify the areas where particular objectives should be achieved. Providing greater direction as to where housing growth should take place is positive; however, it is dependent upon a robust rationale and effective implementation. As noted above, the implementation of the new residential zones has been inconsistent, and has resulted in certain parts of the metropolitan area accommodating a greater proportion of growth than others, and a perception of 'winners and losers'.

Council therefore submits that the application of the zones across the city has been varied, in both process and outcome and this current review of the residential zones should consider how the resulting imbalance can be addressed, and how the residential zones can be improved.