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AMENDMENT VC69 INTRODUCES NEW PROVISIONS FOR RESOURCE RECOVERY

On 2 August 2010 Amendment VC69 to the Victoria Planning Provisions (**VPP**) was gazetted. Among the changes introduced, Amendment VC69 alters the State Planning Policy Framework for waste management to encourage resource recovery and amends clause 52.10 to all Victorian Planning Schemes. The Amendment has been informed by the recent Advisory Committee process into refuse transfer stations and materials recycling facilities, chaired by Nick Wimbush.

Many councils will be aware that in furtherance of the state government's Towards Zero Waste Strategy (**TZWS**) a number of initiatives have recently been developed. One notable theme arising from the waste reduction targets set out in the TZWS is the State Government's desire to promote third bin services and other related policy initiatives to promote diversion and recycling of organic municipal waste streams and the development of markets for recycled and treated organic waste products.

Other initiatives being advanced under the umbrella of the TZWS include:

- the Victorian Advanced Resource Recovery Initiative (**VARRI**) - a \$10 m initiative to support development of Alternative Waste Technology (**AWT**) for metropolitan Melbourne
- the introduction of a market based approach to the treatment of prescribed waste, through new regulations introduced by the Environment Protection Authority in 2009
- a Review of Regional Waste Management Groups being conducted by Sustainability Victoria.

Amendment VC69

The changes introduced include amendments to:

- clause 12.07 and 18.10 of the VPP to emphasise the role of resource recovery and the TZWS, and to refer to the Metropolitan Waste and Resource Recovery Strategic Plan (the successor to the former metropolitan regional waste management plans);
- amends the operation of the table of uses in specified zones as they relate to Materials Recycling and Refuse Transfer Stations;
- amends clause 52.10 to include reference to contemporary forms of resource recovery and materials recycling facilities; and
- introduces a new particular provision for resource recovery (clause 52.45).

Amendments to SPPF

Notably, clause 18.10 (Waste Management and Resource Recovery) has been amended to make express reference to the TZWS and the *Environment Protection (Industrial Waste Resource) Regulations 2009* which came into force in July 2009 and which require generators and transporters of prescribed wastes (including occupiers of contaminated land) to promote treatment and secondary re-use of prescribed wastes.

Councils can expect to see demand for new recycling and treatment facilities grow as a result of the introduction of these regulations and the changes to the SPPF.

Clause 52.45 – Resource Recovery

While the clause is headed 'Resource Recovery' and that term is not defined by the VPP, clause 52.45 applies to all land to be used and developed for a transfer station and/or a materials recycling facility.





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It includes application requirements addressing a range of matters including details of material to be handled or stored, hours of operation, identification of whether a works approval or licence is required from the EPA, assessment of amenity impacts and traffic generation.

It also includes specific decision guidelines which will assume significance in future applications. Relevant criteria include:

- the contribution of the proposal to achieving the resource recovery targets established by the Victorian Government
- the impact of the proposal on the amenity of the surrounding area
- the TZWS and the Metropolitan Waste and Resource Recovery Strategic Plan
- relevant best practice guidelines endorsed by EPA and Sustainability Victoria for composting and other recycling facilities, organics recovery and resource recovery generally.

We anticipate that the inclusion of a new particular provision will mean that the state level particular provision may have a tendency to override local planning policy. Consideration of strategic planning responses, including zoning and the use of development plans and structure plans for industrial areas may become increasingly important to local government.

Zones

The amendment alters the treatment of materials recycling and transfer stations in various zones. The effect of such changes is beyond the scope of this update and specific advice should be sought where there is doubt as to the effect of this.

In some zones, such as the Residential 1 Zone, the effect is to prohibit these uses, whereas in others the effect will be that a permit is now required for a Transfer Station.

Clause 52.10

The amendment introduces a new purpose group to clause 52.10 headed “Resource Recovery.” In essence, this description is an umbrella grouping for a range of waste related industries including materials recycling and transfer stations. The expression is not defined in clause 74 or 75. This creates a disconnect between the language in clause 52.10 and planners will need to be conscious of this.

Definitions

The previous definition of a Refuse Transfer Station has been changed to refer to a ‘Transfer Station’ so that the name can be more easily related to resource recovery and recycling. A Transfer Station is now defined as:

Land used to collect, consolidate, temporarily store, sort or recover refuse or used materials before transfer for disposal or use elsewhere

The new definition for Materials Recycling is as follows:

Land used to collect, dismantle, treat, process, store, recycle, or sell, used or surplus materials.

The purpose of the change is to make a clearer distinction between the mere handling or processing of wastes or scrap items (a transfer station) and the treatment or processing of such items (materials recycling). This had proved a contentious issue in a number of recent decisions of the Tribunal and the Supreme Court. The changes should go some way to clarifying the characterisation issues raised in cases such as *Able Demolitions & Excavations Pty Ltd v Yarra Ranges Shire Council* [2008] VSC 294.

We note that the definition of materials recycling could allow the mere selling of used or scrap materials to constitute materials recycling, without the need for a handling or treatment process to be evident. As such, it may be that the definition remains open to debate.

Summary

Amendment VC69 and related initiatives of government, including the VARRI initiative, underscore the increasingly important role of resource recovery efforts as part of the TZWS targets.

The reforms are essentially focused on the statutory planning process. Future reforms may include strategic responses including the designation of particular precincts or guidelines for structure planning industrial areas to achieve economies of scale in the resource recovery industry.

The development of detailed siting criteria and structure planning processes for such facilities in urban and rural contexts would be of great value to Victorian councils in both the strategic and statutory planning context.

The future introduction of carbon price signals, whether at State or Commonwealth level, will continue to underpin investment in resource recovery. As councils are a key stakeholder in any reforms to the sector, councils that plan ahead will be better placed to control the roll out of new resource recovery infrastructure and to play an effective role in the siting and design of such facilities.

Reforms being promoted through the TZWS and Amendment VC69 are likely to have important implications for statutory and strategic land use planning into the foreseeable future.

If you have any questions related to the implications of Amendment VC69, please contact Barnaby McIlrath, Senior Associate, on 9288 0614.



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