Helping you understand your planning needs

CITY OF YARRA

Existing Use Rights

When putting together an application for a planning permit, you may realise that your property is being used in a way that is not permitted according to the current zoning that applies to your area. For example, in Yarra there are many pubs located in areas zoned Residential 1 which prohibits some licensed venues.

In most cases, this is legal because the property has existed prior to the current Planning Scheme (having existing use rights). This means that the use of the property can continue even though the current zoning prohibits it.

This fact sheet aims to provide a clear and simple overview of existing use rights, and their implications for your land.

What is an 'existing use'?

Existing use occurs when your land is being used in a legal way, either with an approved permit or an approved use where a permit is not required, but then subsequent changes to the planning controls prohibit that use.

For example, you may have an existing permit to operate a factory in a large area zoned industrial, but that later gets re-zoned to Residential 1, effectively prohibiting its use.

Alternatively, you may own a house in an area that was zoned residential, but has since been zoned commercial.

Why are existing use rights required?

Existing use rights seek to reduce the potential negative impacts that could occur if people were forced to discontinue the use of their property because of a change in planning controls. At the same time, it allows for a transition of land to the new preferred planning outcomes.

Referring to the previous example, if existing use rights were not in place the factory owner would have been forced to close the factory, and may have had great difficulty selling the property, with potentially negative financial impacts. With this in mind, there is also the possibility that they would have invoked a serious legal opposition to the rezoning, delaying the transition to the new zoning. So the presence of existing use rights in this situation benefits both parties.

How do I know if my property has existing use rights?

Existing use rights apply to the land, not the owner, and it is up to owner of the property to prove that they apply.

It is important to note that any works to properties with existing use rights require a planning permit and must comply with current planning requirements.

Further information

If you need more information about planning in Yarra:

Visit our website
> www.yarracity.vic.gov.au/planning

Telephone
> 9205 5555 (between 8.30am and 5.00pm, Monday to Friday)

Visit the planning counter
> Richmond Town Hall
333 Bridge Road, Richmond
Monday to Friday
8.30am to 5.00pm and
Tuesday 8.30am to 6.00pm

For more information about planning in Victoria, please visit www.dpcd.vic.gov.au or call 1300 366 356 and request a copy of *'Planning: a short guide'*.

diverse vibrant exciting inclusive

According to the Yarra Planning Scheme, an existing use may be established in one of the following ways:

> The use was lawfully carried out before the new planning provisions took effect

> A permit for the use had been granted immediately before the new planning provisions took effect and the use commences before the permit expires

> A permit had been previously granted for an alternative use, one that does not comply with the current planning provisions, and the use commences before the permit expires

> Proof of continuous use for 15 years is established (the use cannot have ceased for a period of two years during this time)

> A utility service provider or other private service provider that continues a use previously carried out by a government agency.

It is important to note that existing use rights apply to the specific use of the land but not the development (buildings etc).

How do I prove existing use rights?

Often the easiest way to claim existing use rights is by proving that the use has been continuous for 15 years. This will involve producing a combination of historical information, such as:

> Permits (including endorsed plans) that have been issued for the land

> Utility and/or insurance records

> Records from old editions of the white or yellow pages

Existing use rights apply to the specific use of the land but not the development (buildings etc).

> Photographs (including aerial photography)

> Observations made by Council staff (photographs)

> Statements from existing and previous owners or occupiers detailing how the land has been used.

It is important to note that you must prove that this use was **continuous**.

Can I lose existing use rights?

Yes. The protection of existing use rights is lost if the use of the land has stopped for:

> A continuous period of two years

> Two or more periods which together total two years in any period of three years

> In the case of seasonal use, two years in succession.

If the land is being used for the same purpose, but the activity on the land has decreased, the use is taken to be still occurring.

You can also lose existing use rights if you change the purpose for which the land is used (unless the new use is additional to and related to the existing use).

For example, referring to the earlier factory example, if you were to build a small ancillary office space next to the factory for use in association with the factory, you would retain your existing use rights. However, if you were to turn the whole factory into an office block, then you would lose the existing use rights for a factory as you have changed the entire use of the site.