

The 3068 Group's Submission on Modernising Victoria's Planning Act.

This submission is made by the 3068 Group a local residents group. Our aim is to conserve the heritage and amenity of our area and to protect it from the encroachment of unsympathetic development. Postcode 3068 includes both Clifton Hill and Fitzroy North.

Submission

Get Real About Policy

"We need to build better policy and then take it more seriously."

"Get things out of the zone-and-overlay net in favor of a targeted strengthening of those sections of the scheme with more universal applicability"

Don't be Afraid of Prescription

"It's time to admit that there are circumstances in which mandatory controls provide considerable benefit in the form of increased certainty and reduced planning disputes."

A Possible Short Permit Process (Appendix No.3)

"Simply put, we need a better way to share the work, while at the same time quarantining the *assessment* process as something that needs to be undertaken purely by Council."¹

Commitment

"Councils and communities need to be able to rely on policies that have been through the process for inclusion in the planning scheme, and should not be open to 'routine' variation by VCAT."

"Tribunals who consider that a local policy does not reflect State government policy should refer their recommendations to the State for consideration rather than simply 'remaking' policy, without consultation on the spot."

Our Conclusion

These reforms are long overdue and do not need to be further delayed by an amendment of the Act.

In answer to the DPCD discussion paper "Scope of the review – a new car or a major service?" We conclude The Act ain't broke. It needs better driving.

¹ Stephen Rowey, [Meeting Half Way Glen Eira's pre-application certification model](#), Planning News 35 Volume No.3 April 2009, (See Appendix No.2)

Appendix 1: 'Building a Better System'

By T. S.Rowley, T. Wescott and G. Di Vicezo, ²

The Problem of Zones

"Planners tend, nowadays to recognize that there are advantages to a vibrant (mix) of uses, but the planning tool is fundamentally designed to *separate* uses. The Victorian system uses various means to get around this patchwork (site-by-site application of zones, wide discretion within zones, and 'antizones' such as the Mixed Use Zone) but it is important to recognize that when we use a zoning based system to achieve mixed use outcomes we will always be fighting the inherent constraints of the system."

"The other problem is that by prioritizing use and development 'triggers' at the expense of policy, the zone and overlay system tends to maximize burden and minimize outcomes. This is because the (system) limits our consideration of any given application to those issues that specifically relate to the need for permission. This is a sound principle in that it stops each planning assessment from blowing out into a boundless critique, but it leaves the planning system struggling to deal with broad based issues such as sustainability or housing affordability. This is because the planning system doesn't get a look in unless a permit is triggered. So a zone and overlay system will either let these issues go through to the keeper (minimizing outcomes), or attempt to address them by throwing the permit triggers out as widely as possible (maximizing burden). For these reasons much of the discussion (that follows) talks about how to get things out of the zone-and-overlay net 'in favor of **a targeted strengthening of those sections of the scheme with more universal applicability**, such as the state (SPPF) and local (LPPF) Planning Policy Frameworks, and the Particular Provisions."

Get Real About Policy³

"The SPPF and LPPF simply aren't taken seriously, and we should stop tiptoeing around this point. This is simultaneously a cultural, structural and content related problem with each reinforcing the other. It is a cultural problem because there is an entrenched idea that if something *really matters*, it is put in a zone or overlay. It is a structural problem because policy is not allowed to include prescriptive controls and can only function where some other control applies. And it is a content problem because the SPPF has essentially been filled with largely ineffectual motherhood statements; while the LPPF has been viewed with suspicion as a vaguely subversive dumping ground for whatever Nimby-ish local concerns Councils could sneak past the DSE and DPCD.

"As a profession **we need to build better policy and then take it more seriously.**" The first step to doing this is to improve the sections of the Scheme that are of state-wide application: not just the SPPF but also the particular provisions. Both are empty, but in different ways. The SPPF as mentioned, is 'light on', with too little content. The Particular Provisions meanwhile often have a 'throw every ball in the air and let the planners catch them' approach: the parking and advertising sign provisions, for example mention every possible consideration without giving any guidance as to how competing imperatives should be resolved. This creates inconsistency and uncertainty and

² T. S.Rowley, T. Wescott and G. Di Vicezo, Building a Better System, Planning News Volume 34 No.3 April 2008, p.8

³ op. cit.

leads to arguments that should be determined on a system-wide or area-wide basis being fought over and over again in each application...”

”It also means Councils waste a great deal of effort duplicating strategic work that has state-wide application....Consider the number of policies in local sections of planning schemes that cover matters of state-wide interest: advertising signs, discretionary uses in residential zones, development applications in heritage areas, and so on. These often contain genuinely local provisions but they also expend a great deal of time outlining general principles that will apply everywhere. General principles such as these should be laid out more clearly in the SPPF and particular provisions, leaving the local policies to concentrate on particular local considerations.”

”The foundations of a much more helpful State policy section already exist. In addition to the many local policies that could be adopted to state-wide use, various branches of the State government produce all sorts of documents that sit outside the scheme: urban design documents such as the guidelines for activity centres, safer design and higher density residential development, or Heritage Victoria’s *Guidelines for Assessing Planning Permit Applications*. The problem with all this work is that it is largely wasted: If we have an acknowledged problem with policy in the Scheme not being given enough weight, what chance do things outside the Scheme have? There is a place for reference documents, but there needs to be more effort put into boiling down the essence of some of these documents into punchy policy that will benefit everybody.”

Don't be Afraid of Prescription

“Mandatory controls have been anathema in recent years, but **it's time to admit that there are circumstances in which they provide considerable benefit in the form of increased certainty and reduced planning disputes.** Councils currently fighting height battles for example over and over again at VCAT, with every developer considering their site a special case: with only discretionary controls and a devalued LPPF to call, many height controls are broken down quickly and become simply a starting point for discussion. In circumstances like this there is a lot to be said for doing the strategic work up front and then making it stick through prescriptive controls.”

Commitment and Certainty

“A ‘performance based’ system can only provide reasonable consistency (with reasonable resource demands) if there is a strong policy framework and a commitment to following policy unless there are exceptional reasons for variation. **Councils and communities need to be able to rely on policies that have been through the process for inclusion in the planning scheme, and should not be open to ‘routine’ variation by VCAT.** In the current system the VCAT principle of ‘each application considered on its individual merits’ effectively outweighs the principle of consistent application of policy. In this context, policy has limited credibility and the phenomenon of repeat appeals is encouraged. One option may be to require that decisions be in a ‘band’ established by policy standards.”

”Tribunals who consider that a local policy does not reflect State government policy should refer their recommendations to the State for consideration rather than simply ‘remaking’ policy, without consultation on the spot.”

Appendix 2: The Permit Process - Glen Eira's pre-application certification model

From Stephen Rowey, Meeting Half Way Glen Eira's pre-application certification model, published in "Planning News"⁴

"The difficulty in (the) conception lies in its placing of so much weight on the provision of a certifier's report. After all, **compliance with State and local policies is very much in the eye of the beholder; it's not a simple matter that can be outsourced, and certifiers are not truly independent if they are paid by the applicant.**

And since the Council is not freed of its assessment burden, the subsequent fast tracking of the application seems a disproportionate reward for simply providing a properly documented application.

Simply put, we need a better way to share the work, while at the same time quarantining the *assessment* process as something that needs to be undertaken purely by Council."

Appendix 3 Possible short permit process

Alternative to the proposed permit process presented in Modernising Victoria's Planning Act A discussion paper on opportunities to improve the *Planning and Environment Act 1987*, March 2009, p.12.

A more detailed application form.

Ability for a responsible authority to refuse to accept an application if it is incomplete

Alternative notification procedures

Pre-application certification if desired by applicant

Assessment of the application under delegation including consideration of any objections and referral comments Permit/Refusal issued not actionable for 7 days

A decision within 30 days.

Applicant and objectors have seven days to appeal the decision

Appeal takes place on-site and a decision is made on the spot.

⁴ Stephen Rowey Meeting Half Way, "Planning News Volume 35 No.3 April 2009, p.14.