

Submission to Department of Planning and Community Development on

Discussion Paper: “Modernizing Victoria’s Planning Act”, 30 April, 2009

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Design 79 has prepared residential building designs and Town Planning applications since 1979. I applaud the stated goal of the review, in particular to simplify the current laws, and to strengthen the timeliness and certainty of planning application decisions.

I will comment on the application process (6.0), which, as you know, is currently extremely slow and uncertain. Most of our Town Planning proposals are for low to medium density developments—two to five dwellings. We normally tell clients to expect a two year process, as most will require VCAT decisions. This is because even when we try to meet all requests of Town Planning staff, often approval is overruled by the Councillors themselves or a senior staff member, none of whom have been involved in the process of consultation/design with the Council staff member assigned to the project. This is extremely frustrating to us and our clients.

Rarely are Council decisions made within the statutory 60 day time limit. Applicants are reluctant to appeal against Councils’ failures to make a decision within the time limit as they know it will take 4-5 months to get a VCAT hearing, and maybe several months after that to get a VCAT decision. Often Council staff are assuring them there will be a decision “soon,” although it is amazing how many times the proposal somehow fails to make the agenda for that month’s Council meeting and everything is delayed for another month (longer if holidays are coming up and Council isn’t sitting).

One of the major problems we face in designing a proposal (and the reason so many proposals end up at VCAT) is the vague and subjective criteria in the Planning Scheme, e.g., “appearance of bulk”, which we are to avoid, and “neighbourhood character,” which we must respect, or conform to, depending on the specific Council. All such vague terms should be removed from the Act and all Planning Schemes.

Another problem is that Councils add unofficial “wish lists” to their decision-making criteria which are outside the Planning Scheme. For example, we might meet the setback requirements of the Scheme, but Council staff will say their policy is to have greater setbacks. This should not be allowed.

6.1 Streamlined “short permit process” definitely should be available for simple planning applications on minor matters, yes, and technical criteria should be the test. So many matters now, where an overlay is involved, require the same extensive documentation as major developments.

Outside pre-application certification, if adopted, should be totally optional, and not required. Otherwise, it will just increase the cost of preparing applications. It is the job of the Council to determine whether all necessary information has been provided. If that is

certified outside, then application fees should be reduced, and Council must be required to accept the application as complete.

The information required for an application should be clearly specified in the Act and/or Planning Schemes. It should not be left up to Council staff to decide what information is required. At the moment, they keep adding unnecessary requests for information (e.g., establishment survey even before development approved, all vegetation on adjoining blocks identified and placed on a plan by a licensed surveyor, etc.)

6.2 Lodging an application. As noted above it is not correct that “the requirements for lodging a planning permit application outline all the information that must be provided...”. In practice Council staff often require much more information. They should not be allowed to add requirements at will.

Councils definitely should NOT be allowed to refuse to accept applications they believe are not complete (although some Councils DO do this now anyway). This will only slow down the process by requiring the applicant to keep coming back to Council and trying to re-lodge. This will do nothing to speed the process. Instead, if applications are missing some key items (copy of title, etc.), then Council should be able to request it (within 28 days), and the clock stops until it is provided, as today. Council should only be able to make one request for additional information, asking for all outstanding information. Unfortunately, some Councils now keep expanding their requests for new items time and time again for the same proposal. They keep thinking of new things they'd like included.

Again certification should be totally voluntary, but if provided, it should be required to be accepted.

A more comprehensive application form is not necessary, but a clear checklist of the information that must be provided with an application (under the Act) should be available to applicants.

6.3 Notice of an application. The requirements for how extensive notification must be should be linked to the new Zones under consideration.

Councils do not need “more discretion” in deciding who should be notified. They generally require letters be sent to everyone in an area now. The classification of Class 1-3 is a good idea. Certain types of application should require no notification.

6.4 Objections. Currently many objections are totally related to “commercial advantage,” and these are still accepted as valid objections by Councils—the objector may say that they believe the proposal will hurt the value of their property. This should not be accepted as a proper ground for objecting. Yes, Councils should be able to ignore vexatious or irrelevant objections. For example, we have encountered such examples as “the development will result in more people in the neighbourhood having pets, and this will be annoying,” or “people will be able to look out of the second storey window at the footpath and purve (sic) on children walking to school,” or “we want the developer to

build a new fence between our property and the new development.” These should not be considered valid objections, and the submitter should not have appeal rights.

It is a good idea to offer the option of a “submission.” Those who make a “submission” should not have the right of appeal.

There definitely should NOT be a structured objection form, which will only prompt those making comments to make statements they hadn’t intended to make, possibly increasing negative comments. An objector should not be required to be more specific about how they might personally be affected; their objection should stand alone on its own merits, or lack thereof.

Yes, the responsible authority should be able to reject an objection. They can do it now in the case of a “commercial advantage” (see above), but they don’t use this discretion.

6.5 Referral authorities. Timeframes need to be specified to ensure the referral authorities respond promptly to requests for their input.

6.6 Making a decision. Policies that “sit outside” the Planning Scheme should not be allowed to be considered in making a decision. (see comments about Council “wish lists” at start of these comments above). Yes, there should be a hierarchy of policy documents, there should be different decision-making considerations for different application classes.

TOP PRIORITY: Time limits urgently need to be prescribed by regulation for Council to decide whether revised plans meet Condition 1 amendment requirements and if so, to endorse the plans. In particular there should be a time limit on deciding whether landscaping plans meet a permit Condition. Currently, landscaping plans disappear into the Council bureaucracy, often farmed out by Council to consultants who can not be reached by phone and the plans literally languish for months. The same is true for drainage designs, wrongly required by Permit Condition to be approved by Council (the authority to approve or refuse drainage designs is the responsibility of a Building Surveyor). Meanwhile, even though the project has a Planning Permit, a Building Permit can not be issued, nor construction started until plans are endorsed.

Furthermore, the time limit for commencing construction and completing construction stipulated by the Permit should not start until endorsed plans are received. Currently, if there is a 12 month limit on starting construction, and Council takes 6 months to endorse plans, then there is effectively only a 6 month period in which to commence construction.

6.7 Conditions. See two paragraphs above—time limits **MUST** be set on approving or rejecting plans amended to meet Conditions.

Yes, ongoing life of conditions needs to be clarified and payments should be provided within permit conditions, not requiring 173 agreements or development contributions plans.

Thank you for this opportunity to comment.

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