

Save Our Suburbs

"Streamlining the Planning Process"

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Summary

While SOS agrees that streamlining the planning process is a good idea, doing it by not requiring planning permits for some applications is clearly the wrong approach.

Not only would it not address the underlying problems that are straining council resources, it would create a range of negative impacts that would cause further distress in the community, and **not** significantly improve councils workloads.

Instead, the underlying cause should be addressed; the discretionary basis of the Planning system.

As the current Planning system allows no firm controls, every single application has to be evaluated against objectives that have no clear definition. This is resource intensive for councils and for permit applicants who have to frame their application in terms of objectives instead of clear standards.

It then leads to further inefficiencies as the application, which can only be evaluated subjectively, is argued about at Council and then at VCAT.

A much fairer, simpler, and efficient system would be to have mandatory controls. Both applicants and councils would be dealing with greater certainty and a much faster process, something the M2030 Implementation Reference Group has stressed as being a necessary reform.

In addition, VCAT has become a duplicate planning authority, it's role should be changed to a "process review" only.

Currently, single dwellings on sites greater than 500m² do not require a planning permit. **This is a massive loophole in the current planning provisions and causes enormous problems due to building envelopes being located without any reference to neighbourhood character or ESD principles, and allows developments that masquerade as single dwellings but are designed for easy later conversion to multiple dwellings - "dual occupancy by stealth".**

Advertising requirements for planning applications do need to be reviewed, but instead of removing requirements, they should be strengthened. At the moment Councils are free to arbitrarily decide who is notified, and this can result in inadequate notification.

Firmer guidelines should be established so that Councils have clear direction on who they must notify, and when.

Recently the Minister strangely removed Rescode requirements from Heritage Overlay areas (VC033). Given that Heritage Overlays have not been particularly successful at Councils or VCAT, this effectively means he has removed most of the planning controls in heritage areas for single dwellings! **This should be immediately reinstated!**

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Removing permit requirements will create problems

Removing the requirement for a permit for some activities will cause a number of problems ie

1. The activity will happen without any oversight, and may impact neighbouring light, amenity, privacy or another cause some other impact.
2. Even if precise guidelines are implemented, residents will have no mechanism to ensure they are enforced (ie it will be the same as the current Building regulations)

It would be much better if councils developed a clear policy for evaluating these types of planning request, rather than to remove the need for a permit.

For the specific items mentioned by the Minister -

1. Shade Sales
These have the potential to massively impact the next door neighbours, and should require a planning permit.
2. Fences
Fences are often a major area of conflict between neighbours, and can dramatically impact privacy and light. As such, they should require a planning permit.
3. Cubby house
What is a cubby house? Could someone build something without a permit that has a bathroom, kitchen, and large room and call in a cubby house? If they did, who could a neighbour complain to, and what would be done about it?

Even if the definition of cubby house was quite strict (say at most 4 square meters, no greater than 1.8m height, no plumbing etc etc) they could still substantially impact the neighbouring properties.

As such, they should require a planning permit!

"Small" items that currently require a planning permit do so for a good reason, and there is no need to remove them from the planning system.

Removing permit requirements will not significantly impact councils resources.

Given clear Council policy on evaluating these types of permits, they would take less than 15 minutes to evaluate. Even if a council had 500 of these small applications in a year, that only translates into less than one man month of work.

There are MANY other things that could be done that would save the council much more time than removing permit requirements AND that would improve planning outcomes ie require dimensions on plans!

In summary, the cost/benefit of removing these items from the planning system clearly shows a significant detriment, for no real gain. As a result, this change should NOT be made.

Mandatory Controls

The current planning system is "performance based" - so called because the performance of each application is assessed against planning objectives to decide if it receives a permit.

This is a vastly more complicated process than required or indeed is used in other countries! Instead, applications should be assessed against a relatively simple set of criteria, the key ones of which would be mandatory (amenity standards, neighbourhood character, ESD principles, zones & overlays, etc).

But because there are no firm rules, everything is open to interpretation - which results in a slow and cumbersome process for resident, developers, and Councils!

The only people the current system serves well are lawyers and planning consultants!

Something that would massively streamline the planning process, AND result in better and more consistent outcomes, AND result in less resource usage by resident, developers as well as Council, AND provide more certainty for residents and developers, would be to allow mandatory conditions in local planning schemes.

SOS has discussed this with many residents, developers, and councils, and we all agree this change should happen - even if we disagree about what the mandatory conditions should be (ie everyone thinks there should be hard height limits, we just disagree what the height should be).

Yet the state Government is moving in the opposite direction ie the Minister has recently stated (Yarra Council, 14/2/2006) that even in local structure plans "Any built form controls should be discretionary and not mandatory".

Unfortunately, "**discretionary**" means "**optional**" and resource intensive for everyone involved in the planning process.

Mandatory controls (such as build form etc) would mean that council process would be strengthened by more certainty and much less complexity, so assessments would be processed more quickly, more consistently, more efficiently and with better planning outcomes.

Local planning provisions approved by the minister (structure plan controls, development overlays, zoning requirements etc) should also be mandatory and not open to being overridden by VCAT or by planning panels - otherwise not only does the whole process become extremely inefficient, it also does not achieve the desired outcome.

This would also neatly address the complaints of councils that the VPPs and Rescode are too much a "one size fits all" approach - mandatory local controls (and including Rescode amenity standards) would greatly simplify all assessments while also allowing for local variations.

The trade off for requiring ALL proposals to obtain a planning permit is that a more prescriptive regime will greatly reduce the complexity, timeframe and cost of every step of the process, from initial applications to final VCAT decisions. In doing so, it will also strengthen the fairness, efficiency and consistency of council assessments and provide more consistent and appropriate planning outcomes - surely the ultimate goal of any planning system.

If the State Government really wants to streamline the planning process, they will allow mandatory conditions in local planning schemes!

Advertising Standards

A major problem with the current Planning and Environment Act is

"50A (d) to any other persons, if the responsible authority considers that the grant of the permit may cause material detriment to them."

In many cases residents who will be detrimentally impacted by the development under consideration are not notified.

This problem occurs because Council -

1. Insufficiently considered the impact of the application.
2. Insufficiently considered the area the application will impact
3. Sends letters to occupants, not property owners.
4. Sends letters that do not arrive.

Advertising is an extremely small cost and should, by default, error on the side of over informing the surrounding area.

The discretionary nature of Councils process should be changed to include minimum requirements, including the dispatch of such important notices by registered mail, sending notification to owners as well as residents, and minimum requirements on who has to be notified.

Permits for Single Dwellings.

Much community anger and angst is caused by the non application of Rescode to single dwellings on lots bigger than 500m.

Even though Rescode does not provide much protection, and it is largely optional for a developer to follow, it at least attempts to provide some guidance.

Many houses a built that dramatically effect the neighbours amenity, yet there is nothing the neighbour can do!

Why do we have this enormous hole in our planning system?

In addition, the practice of building something that is **not** a single dwelling, but calling it that to avoid any compliance with Rescode, is growing.

For example, a member of the SOS committee has been to VCAT 10 times over a development of two houses next to his property - which the developer has called a 'single dwelling' as he has connected them with several doorways through the central party wall.

In another example that came to SOS this week, a developer is building a 'house' with 6 bathrooms, a shed large enough to hold 36 cars, swimming pool, tennis court, and large music studio.. Is this really a 'single dwelling' that Rescode should not apply to?

This uncertainty, confusion, and frustration could be simply fixed by tightening the definition of dwellings and requiring ALL dwellings to conform with a more mandatory Rescode! That would be a simple step to streamline the permit process.

In addition, while ALL construction should require both a planning and a building permit, oversight of building should be returned to councils - the Building Commission does not have legislated enforcement powers and for proper coordination and efficiency, and municipal building surveyors should be able to oversee the whole process of compliance with both types of permits.

Permits for Single Dwellings in Heritage areas.

As for single dwellings in non heritage areas, dwellings in heritage areas should also be covered.

This was the case until recently, when the planning Minister strangely removed Rescode requirements from Heritage Overlay areas for single dwellings. Given Heritage Overlays have not been successful supported at Councils or VCAT, this effectively means he has removed most of the planning controls in heritage areas for single dwellings!

Local amenity and neighbourhood character values in heritage areas deserve at least as much protection as any other residential areas.

This is in no way streamlines the planning process, instead it will be responsible for even further damaging our heritage areas!

This should be immediately reinstated.

VCAT

VCAT has evolved into being a duplicate planning authority, in parallel with every council in Victoria AND the Minister and various planning panels.

This duplicate (or triplicate) approach to planning raises significant inefficiencies, as well as causing significant problems with residents and developers, including cost and time.

It is SOS policy that VCAT should exercise a strong oversight function over council processes, not usurp their role as the responsible authority.

The whole planning permit process would be significantly streamlined if the role of VCAT was changed to one of "process review", instead of the current "merit review" that requires all parties to repeat the same process they had at council.

Other suggestions to streamline the planning process.

- (1) Require accurate dimensions on all plans
- (2) Do not allow plan substitution at VCAT (It would be better still to change the role of VCAT (as above))
- (3) Removing referral authorities' zonings and placing them in the Building Regs might seem to remove one unnecessary layer of complexity from councils but
 - (a) building and planning should be re-integrated (as mentioned previously) and
 - (b) siting requirements should include more than just regulation setbacks etc - they should ALL have to take account of local neighbourhood character (all adjacent buildings in the same street should automatically be subject to the same neighbourhood character controls) and they should ALL take account of ESD principles in siting, construction, materials and fit-out of appliances etc
- (4) Councils should have the ability to refuse substandard applications outright without appeal.
- (5) The Planning and Environment Act should be rewritten to clarify current priorities. It is hopelessly out of date - transport, development densities and environmental issues in general (eg water retention & conservation) have become much more defined and much more important over the last 2 decades, and planning provisions need to correlate with other relevant legislation on these issues.

Response to "suggested submission"

Do you think there are any matters that currently require a planning permit but should not require a planning permit? List the relevant uses and developments.

No. In fact the opposite is the case, all dwellings should require a permit because of ESD/site and neighbourhood character requirements. Specifically, single dwellings on sites greater than 500m².

Are there any matters that currently require a permit but should not require a permit if certain criteria or standards are met? List the relevant developments and uses and the criteria or standards.

No. The major problems with doing this are -

- (1) For items such as shade sails and fences, it will be difficult to make a fixed standard that all should comply to. Many problems can be caused by these items, as they can impact light and privacy of neighbours.
- (2) For items such as 'cubby' houses, developers would push the definition to the extreme (ie how many bathrooms can a cubby house have??) with none of the things theoretically taken into account with a planning permit applied.
- (3) There would be no easy mechanism to ensure compliance. While Planning enforcement isn't that good, it is at least sometimes possible to have a planning permit enforced - what chance would a resident have if there wasn't a planning permit involved?

If the state government does take this risky step, it should make sure that all the definitions are made extremely specific to avoid any confusion in interpretation, and it should provide an efficient and timely mechanism to protect and enforce the requirements - ie if a resident rings up today to complain about something constructed without a permit that does not meet the guidelines, something significant is done about it (nothing in the current planning system has this happen...)

Do you think there are any instances where the requirement to advertise an application is unnecessary? If so, in what circumstances?

Extremely rarely, and the exact opposite is currently a major problem with councils arbitrarily deciding NOT to notify residents who are significantly impacted by developments, and with no set policy on how visible 'publicly displayed' signs have to be.

The only circumstance for non advertisement would be a small planning request (ie less than \$5,000) on an individual residential premises, that had NO impact on either light, visual bulk, privacy, or amenity of any of the surrounding neighbours.

What should be developed is the opposite, ie detailed rules on the minimum amount of advertising done ie everybody within 200m of a licensed venue should be notified of any planning request put forward by the venue.

Do you think there are any instances where the requirement to advertise an application is excessive and should be reduced? (For example, instances where advertising should not extend beyond advertising to adjoining properties.) If so, what type of application does this apply to? How do you think these requirements could be reduced?

No. As above, this is done too often already. It only costs the developer a few dollars to let people know what is going on, and it should be done properly.

Do you think there are any steps in the planning permit process that are too complicated or unnecessary? If so, how do you think these steps could be simplified and what steps could be removed?

No, there aren't that many steps at the moment, and while each should be made less complex and more efficient, they don't need to be removed.

Do you think there are any instances where requirements for information (either within the planning scheme or by responsible authorities) are unnecessary or excessive? If so, how do you think these requirements could be reduced or removed?

No, the opposite is a major problem and a drain on council and community resources. For example, **dimensions are STILL optional on plans!**

Do you think there are any aspects of the planning scheme amendment process that could be simplified or removed? If so, what would you change about the amendment process?

Yes, there are.

The overall process is

1. Minister allows amendment process to commence
2. Council engages consultant or uses own staff to write the amendment
3. Council consults with the community
4. Draft amendment goes out to an independent panel
5. Draft amendment goes back to council for final drafting
6. Sent to the Planning Minister for approval
7. Gazetting

The main areas that should be simplified are the last two - it can sit on the Planning Ministers desk for a year or so, and then it can take a long time before being gazetted! There should be mandatory maximum timeframes for the whole process.

This whole process would also be aided by allowing mandatory conditions in the word "must" in local planning policies.

Are you aware of any recent examples where the planning process has been made more complex? If so, can you explain what occurred and why the change introduced further complexity?

Yes, the Priority Development Panel has been created, to fast track developments that most likely should never get a permit in the first place.

This has added yet another path for the developer to get a permit, and not only takes a massive effort in resource for residents to be involved with, it's even less open to open discussion than VCAT. It is yet another thing residents have to learn about and use resources on, thus raising overall complexity.

Many of the amendments to the P&E Act last May also increased the complexity of the steps in permit assessments, especially by allowing opportunities for appeals to VCAT at most stages of the process

Are you aware of any good examples where the planning process has been made more simple? If so, can you explain what was achieved and why the initiative has been successful?

No.

Other comments:

Please include any other comments that you may wish to make that are not covered by the above questions.

See the rest of this paper.