

**Planning and Building Approvals Process**

**Review Discussion Paper**

**Submission**

**November 2019**

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# Executive summary

The Municipal Association of Victoria is the peak representative and advocacy body for Victoria's 79 councils. The MAV was formed in 1879 and the *Municipal Association Act* 1907 appointed the MAV the official voice of local government in Victoria.

Today, the MAV is a driving and influential force behind a strong and strategically positioned local government sector. Our role is to represent and advocate the interests of local government; raise the sector's profile; ensure its long-term security; facilitate effective networks; support councillors; provide policy and strategic advice; capacity building programs; and insurance services to local government.

The MAV welcomes the opportunity to contribute to this review of Victoria’s planning and building approval processes. Victorian councils have demonstrated an ongoing commitment to process improvement. As the Commissioner acknowledges, many of the proposed improvements have been pioneered by councils either individually, regionally, or in partnership with the Victorian Government. Broader adoption of these initiatives should be explored, and the Commissioner identifies several other proposals with merit.

We are disappointed that the discussion paper repeats a number of common but unsubstantiated claims about councils, approval processes, and associated costs and impacts. Planning and building is complex. Councils must operate within this complexity and this inherently carries time and financial implications. The report does acknowledge the critical role of approval processes in balancing private and public interests. However, this is often ignored by parts of industry seeking to sideline community involvement in decision making. While the Commissioner cannot control how her findings are reported, these responses are predictable. Peak bodies, including the MAV, have a vested interest in protecting their members. Giving weight to unsubstantiated figures and claims provides easy ammunition for media to use without context. Since the discussion paper’s release we have already seen news articles and industry statements portraying the discussion paper as substantiating these figures.

Overall we commend the Commissioner for her engagement with councils in the review so far. Input from councils has been prioritised through multiple workshops and more extended sessions. The Commissioner has also made clear that she values an ongoing dialogue with both the MAV and Victorian councils. We are eager to work together in further developing and implementing improvements to Victoria’s approval systems. However, we do wish to draw attention to the extremely short timeframes to respond to the discussion paper. Three weeks is an extremely short time to give proper regard to the far-reaching proposals being discussed.

Part D of the discussion paper deals with building approvals. We are currently developing a discussion paper for member councils on broader building reform. As such, we have chosen not to pre-empt this process by commenting on these issues in the short time period provided. We believe that these issues are better addressed as part of a more comprehensive examination of the building regulatory system and the Building Act.

# Recommendations

* That caution be used to ensure that efforts to streamline approval processes do not compromise the quality of decision being made and the outcomes sought
* That the Victorian Government provide continued funding for programs like Streamlining for Growth that have been effective in assisting councils to improve processes and boost their capacity and capability, and work with councils to identify where this is most needed
* That the Victorian Government review its processes for implementing planning reform with particular regard for the impacts on local government
* That the Victorian Government, councils, and the planning profession work together to address the skills shortage and boost the number and capability of planners within local government
* That the Victorian Government work with referral authorities to improve their understanding and resourcing of the important role they play in the planning system
* That further discussion occur with MAV regarding the direct role envisaged in several proposals (proposals 34, 55, 74, 89, 93), recognising the resourcing this would require.

# Response to specific proposals

We have not provided a line-by-line response to each proposal. Some proposed improvements carry significant risk for councils and the planning system in general, or alternatively align closely with ongoing MAV and council advocacy. We have provided a response to those proposals below.

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| --- | --- | --- |
| **#** | **Brief description** | **Feedback** |
| 8 | Councils must release panel reports after 7 days rather than 28 | The discussion paper notes that councils do not always require 28 days to consider a report and it could be shared sooner in some cases. The proposed recommendation, which would require councils to release the report within seven days goes far beyond this finding. Seven days will often be a grossly insufficient time for council to consider and respond to a report. Council response may be require a council decision informed by an officer report. Requiring this to occur within seven days is unrealistic and compromises the ability of democratically elected councilors to provide input. |
| 23 | Councils should only accept complete applications | The planning system does not adequately address what is a complete application. A planning application should allow a council to assess the proposal without further information. Numerous reviews have acknowledged the standard of applications lodged as a problem for the planning system.  Clearer and more stringent requirements on the standards an application must meet are long overdue. There will always be some circumstances where further information is needed after lodgment. These should be the exception and not the norm. Bringing applications up to an assessable standard is a significant and unfair burden on councils and the planning system. |
| 35 | Planning concessions for child-care centres, aged care facilities and social housing located in residential areas including potential built form concessions | Providing concessions for these proposals is fraught, particularly built-form requirements such as allowing increased building height. It is appropriate for child-care centres, aged care facilities, and social housing to be established in residential areas and this is already possible.  The built-form of proposals do not need to compromise the character of the area. If concessions are given, they should be responsive to the zone located in rather than applied as a blanket concession across all residential zones.  In considering the Terms of Reference for the Ministerial Advisory Committee on Planning Mechanisms for Affordable Housing, several councils raised issues with providing streamlined pathways. Reduced assessment timeframes may not reflect the often complex issues in assessing proposals for these facilities. Exemption from notice or appeal may also lead to unintended consequences such as further stigmatization of social housing in the wider community. |
| 36 | VicSmart Plus 30-day pathway | The concept of tiered approval pathways such as VicSmart has merit. However, there is no evidence provided to demonstrate why 30 days is an appropriate period. There is also little consideration of why these applications types are considered appropriate for streamlining. Without these, we cannot support the proposal.  A risk-based approach must consider the types of application supported, the required approval processes, and the associated fees and timelines. Failure to adequately do so will have unintended consequences. This may include councils being unable to resource proper assessment, or to refuse inappropriate development.  As a starting point, extensive consideration should be given to particular priority application types. This must centre on the potential impacts of a more restricted assessment process. Only then should potential alternative shorter timeframes be examined. |
| 38 | Pausing the clock for statutory timelines rather than resetting it where an RFI is required | This proposal carries significant unintended consequences.  Information provided in an RFI may have broad implications for the proposal overall. This may require a full reassessment, as is recognised by the current provisions. Pausing the clock may leave a council unable to fully assess an application with all the necessary information at hand. This may result in the approval of an application without appropriate consideration. It may also lead to council unnecessarily refusing an application or failing to decide within the statutory timeframe that it could have otherwise approved.  Resetting the clock also provides an incentive to applicants to provide all necessary information from the outset. The proposed changes could result in poorer quality applications.  The focus should instead be on reducing the number of RFIs that are needed by improving the initial quality of applications. |
| 48 | Longer statutory timeframe for complex applications | We have previously written to the Minister for Planning advocating longer statutory timeframes. The current 60-day timeframe fails to reflect the complexity of assessment, as well as the administrative requirements of external referral and public notice, of many more complex applications.  We believe that a longer statutory timeframe would more accurately reflect the time necessary to assess these applications and provide increased certainty for all parties. |
| 51-53 | Delegations | Delegation must remain a matter for individual councils to decide in line with the expectations of their communities. Given the figures quoted in the discussion paper that 97% of applications are already decided under delegation, this appears to be a relatively minor issue.  More frequent meetings of planning subcommittees, which are not convened at all councils, would add to the already significant demands on councilor’s time and require changes to officer workflows. |
| 63 | Prescribed fee for secondary consent | Secondary consent can be an effective and efficient form of regulating development, but has a legitimate cost to administer.  Based on ongoing experience, councils are skeptical of whether fees developed in state regulation will accurately reflect the full cost to councils. If pursued, one potential option would be a fee based on the time taken by council to perform the task, with appropriate minimums and maximums. This approach has been adopted for some fees proposed in the draft Environment Protection Regulations. |

# Key issues

Role of planning

The role of councils in development approvals can’t be reduced to one of purely customer service. To achieve long-term outcomes in line with strategic planning private interests must be objectively assessed against a broader public good. This is a complex task and often requires weighing up competing and strongly held views and vested interests.

Buildings have long lifespans and development carries significant impact not only for the proponents, but for future occupants, neighbours, and the community as a whole. It is critical to take enough time to reach the right decisions in the approval phase to achieve the desired outcomes.

Developers often call for increased consistency of provisions across municipalities. Local variations to planning schemes are key to the operation of Victoria’s planning system. They allow a unified system to be tailored to meet the different priorities and views of communities across 79 municipalities.

The cost of approvals

Planning and building approvals are frequently blamed for adding significant cost to development, hindering the construction industry, and compromising housing affordability.

The construction and property industries are valuable contributors to Victoria’s economy. This value must be based not merely upon volume, but on the quality being delivered. Quality encompasses not only the workmanship and safety of buildings, but the amenity provided and the alignment with agreed, long-term strategic planning objectives for communities, as reflected in their strategic framework. Robust approval processes are a vital component of achieving this.

In the building system we have numerous examples of the consequences of prioritising speed over quality. These involve risks to life and property, and rectification costs in the hundreds of millions of dollars. It is vital that we improve and protect the integrity of both the building and planning approval systems.

Decreased costs to developers through the approvals process are not passed on to consumers at auction. Increased development costs may delay or make some marginal projects unviable and impact on supply and price. Research is increasingly contesting[[1]](#footnote-2) the conventional wisdom of approval processes being a major driver of housing supply and price. Market forces such as access to finance and developer practices such as landbanking have major, often under-reported, impacts on housing affordability.

Process for reform

State-led reforms have a major impact on local government resourcing. This has two main aspects.

Firstly, planning reforms are often implemented with little if any lead-time given to councils. Training on new provisions is often not available until after they are live in the planning scheme. Councils are unable to incorporate training on new provisions into work plans. This adds to more general challenges regarding the general availability and cost of training.

Unfamiliarity with the new provisions undoubtedly further complicates approval processes. There may be some cases in which forewarning of an incoming change is undesirable and may lead to problems, but these are the exceptions. Ensuring that the final drafting of new amendments, and appropriate training, is made available to councils before an amendment becomes active should be the norm.

Secondly, we strongly urge the Victorian Government to closely involve councils in developing reforms and planning scheme amendments. This contributes to the incorporation of local perspectives and expertise of those at the coal-face of the planning system. This currently occurs to varying degrees. Greater local government input assists in smooth implementation.

Councils recognise that there are significant benefits to taking part in these processes where available. However, too often consultation time frames are short and with little forewarning. This makes it difficult for councils to incorporate into their work plans. This impacts not only the level of involvement possible, but also council’s capacity to continue its core strategic and statutory planning roles. A forward work plan visible to councils with intended timeframes for state reforms would go a long way to addressing these issues.

Capacity and capability within councils

The discussion paper acknowledges that many of the proposed improvements have already been implemented by some councils. Councils have demonstrated an ongoing commitment to proactively improving approval processes. This has been greatly assisted through State-led programs such as Streamlining for Growth. We urge the State to continue working with councils to improve processes and build capacity. In particular, the Streamlining for Growth program should be continued beyond its current final budgeted funding round.

In some cases the primary bottleneck is the availability of planners with the necessary expertise. The solution to this must be working with councils and the planning profession to boost the capacity and capability within local government. The use of private practitioners can supplement this, but comes at considerable cost and loses much of the opportunity to build expertise within council.

As discussed above (Process for reform), engaging with and implementing state-led reforms also majorly impacts council capacity and better management of these processes is needed.

Customer service in relation to planning enquiries is an important function and requires significant resources. One council estimated that for some planners this constitutes as much as 50% of their workload. This is not recognised through State Government benchmarking or activity reporting. It can accordingly be given less consideration in resourcing, and goes largely unexamined in reviews of the planning system.

Other issues

The planning system confers responsibilities on various referral authorities. These responsibilities are not necessarily adequately recognised within those agencies. The responsibility generally isn't reflected in any establishing act of the agency, and isn’t seen as part of their core business. The roles accordingly are often not well understood or resourced. This impacts both the timeliness and quality of advice given to councils.

The description of Infrastructure Contribution Plans as providing for State infrastructure where GAIC does not apply is inaccurate. ICPs contribute to local infrastructure, rather than State infrastructure. They can and, due to their initial rollout in Greenfield areas, do apply simultaneously with the GAIC. Supplementary levies, more closely resembling the case-by-case DCP process, can be used to fund State infrastructure where required if the GAIC is not available.

Councils should be able to view the progress of an adopted amendment through key DELWP internal stages. Progress of an amendment within DELWP is currently an opaque process. This would improve accountability and allow councils to keep better sight of their current amendments. The online amendment system would be a perfect way to implement this.

1. [Murray, Cameron, Time Is Money: How Landbanking Constrains Housing Supply](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3417494); [LGAQ: Assessment of the Factors Influencing Housing Affordability in Queensland](https://test.lgaq.asn.au/library/-/asset_publisher/WmA5/content/assessment-of-the-factors-influencing-housing-affordability-in-queensland); [AHURI: Housing supply responsiveness in Australia: distribution, drivers and institutional settings](https://www.ahuri.edu.au/__data/assets/pdf_file/0012/13242/AHURI-Final-Report-281-Housing-supply-responsiveness-in-Australia-distribution-drivers-and-institutional-settings.pdf) [↑](#footnote-ref-2)