Department of
Sustainability and
Environment

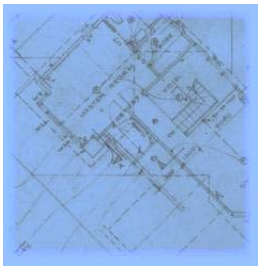
Better Decisions Faster

Opportunities to improve the planning system in Victoria

A discussion paper

August 2003

Victoria
The Place To Be



Better Decisions Faster

This discussion paper sets out a range of options to improve the planning system and reduce problems such as long timeframes, poor quality applications and policy confusion that cause frustration and add to development costs. There are limits to the resources that can be applied to development assessment. Many Councils find difficulty in resourcing these functions, particularly in regional Victoria, but also increasingly in metropolitan Melbourne.

Better Decisions Faster addresses the need to update planning processes. In recent years there has been significant reform to the planning system in Victoria with the introduction of strategically driven planning schemes. This strategic base will be further enhanced through the implementation of *Melbourne 2030*.

There has been little attention paid to planning processes however, particularly for planning permits, since the *Planning and Environment Act 1987* was introduced. This is the area now most in need of improvement.

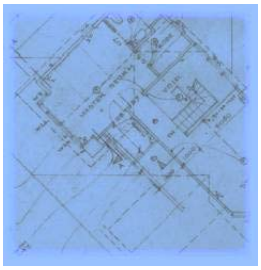
The proposals in this discussion paper build on work done recently by the Reference Group On Decision-making Processes (the Whitney Committee) and bring together a series of complementary proposals that can result in substantial improvements to the efficiency and effectiveness of the 'process' components of the planning system.

Better Decisions Faster is a response to these issues. Other stakeholders may also have ideas to contribute. Comments on the proposals in the discussion paper or any other proposals for improvement are welcome.

Submissions should be submitted by 8 November 2003 and made to:

Better Decisions Faster
Planning Systems Unit
Department of Sustainability and Environment
PO Box 500
East Melbourne VIC 3002

Copies of this discussion paper and the Whitney Committee reports are available on the enclosed CD-ROM, from www.dse.vic.gov.au/planning (follow the links) or from the Planning Information Centre Ph 9655 8830.



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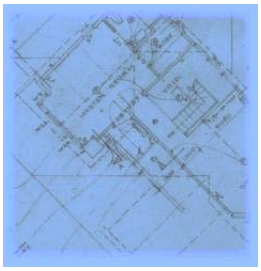


Purpose

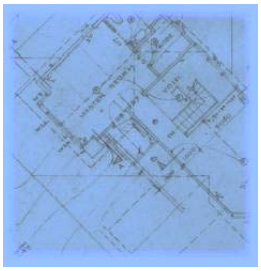
This discussion paper seeks to bring together a series of complementary improvements that can result in substantial improvements to the efficiency and effectiveness of the 'process' components of the planning system.

In reviewing the current processes, the aim has been to identify opportunities for improvement that:

- Improve the timeliness of decision-making.
- Increase the responsibility of applicants to submit well documented plans and explanatory material and reward well prepared applications.
- Recognise the relationship between the complexity of an application and its assessment time and provide different 'streams' of assessment.
- Reduce the number of matters that require a planning permit.
- Recognise the increased willingness of the community to participate in decision-making processes and manage this input in an efficient and constructive manner.
- Clearly define the roles and responsibility of participants in the planning system, including the professional capabilities of planning officers.
- Ensure enforcement mechanisms are effective in deterring planning scheme or planning permit breaches.
- Enhance the strategic justification for planning scheme amendments earlier in the process.

For Councils it is intended that, in combination, the initiatives will allow them to 'lead' rather than to 'administer' development approval decisions.

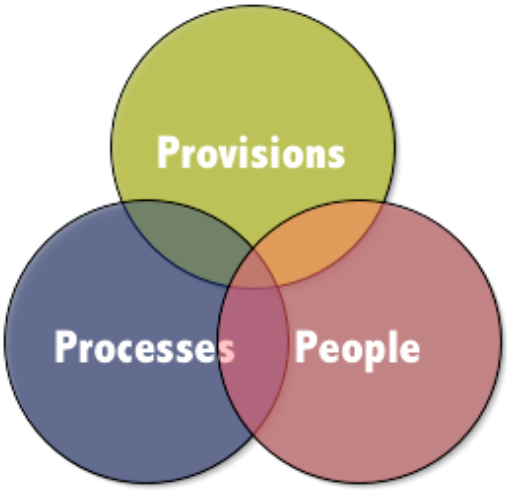
For applicants the message is that more work upfront will lead to a shorter and more efficient process and increased likelihood of a favourable outcome.



Why change?

This discussion paper identifies a number of opportunities for improvement that target 'hotspots' within the Victorian planning system where there is either pressure or opportunity for change and improvement.

The planning system is composed of the three fundamental elements illustrated:



In recent years the focus has been on the development of strategically driven planning schemes (the provisions or regulations). While improvements can continue to be made a solid strategic foundation has now been established. This strategic base will be further strengthened through the implementation of *MELBOURNE 2030.*

Emphasis has also been placed on people and the recognised shortage of people and skills in the planning system. The PLANET professional development program has been operating successfully now for three years. In conjunction with the Municipal Association of Victoria and the universities an Education Roundtable is currently developing a framework for enhancing the education, professional development and operational environment for local government planners.

The work being undertaken by Land Victoria and the SPEAR project is also acknowledged. The SPEAR project will significantly enhance electronic lodgement opportunities and the transfer of data between agencies.

There has been little attention, however, on planning processes since the introduction of the *Planning and Environment Act 1987.* This is the area now most in need of improvement. It is worth noting that the Victorian Civil and Administrative Tribunal (VCAT) is undertaking a concurrent process of reform. The main elements of this include, the current operating environment, implementing strategy and review and feedback.

The current operating environment

The planning system is now characterised by:

Long timeframes

A discretion based decision-making framework must allow time for information assembly, assessment and the documentation of the decision. If not carefully managed however, this process can result in delays in decision-making. Timeliness of decision-making affects all participants of the system. Applicants can be commercially and financially affected by delays in decision-making. Councils have a reduced capacity to effectively manage their caseload and anxiety is heightened for other participants in the system. While no definitive data exists for the whole of Victoria, a sample of Councils has indicated that an average planning permit application currently takes about 100 days to determine.

Poorly prepared permit applications

Expectations of applicants have increased with the emphasis on strategically based planning schemes. Councils indicate that around 90% of applications require further information to be provided. This causes significant administrative delay and sustains the belief that incomplete applications can be submitted without consequence. Communicating information expectations to applicants has been variable at best.

Too many permit requirements

There are about 150 permit triggers in planning schemes resulting in some confusion in the identification of the appropriate triggers. Many planning permit requirements in schemes exist where there is little nexus between the matter being controlled and the achievement of a planning outcome. The ability to exempt minor matters or matters that meet specified performance criteria from the need for a permit is available in many provisions, but not widely applied.

Policy confusion

The ability of local policy to provide effective guidance to decision-makers is still being tested and refined. There are a number of documents such as the *Writing Local Policy Practice Note* and the *Manual for the Victoria Planning Provisions* that provide assistance in the development of policy however many policies in schemes remain difficult to understand and apply. The need to balance a number of potentially conflicting policies is also a matter that is sometimes difficult to achieve.

Inconsistent decision making

There is broad criticism that inconsistent decision-making has made it difficult to understand the clear intentions for a particular area and to formally negotiate. Policy developed as part of new format planning schemes was intended to provide a framework within which consistent and transparent decisions were made. Decisions that are inconsistent with stated policy erode the credibility of the system and the decision-maker.

Difficulty in amending planning schemes

There is a view that there are significant barriers to amending planning schemes. The planning scheme amendment process is seen as a lengthy and costly exercise to introduce new policies or to refine existing policies in light of experience.

Implementing strategy

The release of *MELBOURNE 2030 – Planning for sustainable growth* demonstrates the Government's commitment to better managing growth and to implementing consequential improvements to the operation of the planning permit system. Improvement to the quality of planning applications, a

reduction in the volume of permits and a reduction in applications for review at VCAT are all objectives of Direction 9.1 of *MELBOURNE 2030*.

Councils are now required to prepare housing strategies, growth area plans, structure plans for activity centres as part of implementing *MELBOURNE 2030*. The volume of applications and the discretionary basis for decision-making has made it difficult for Councils to focus on the development and implementation of strategic objectives and those applications that pose policy questions.

In order to achieve the broader strategic goals of Melbourne 2030 the implementation framework - the planning system - must be more robust and efficient.

Review and feedback

Across all States of Australia development assessment processes are under pressure. A Development Assessment Forum (DAF) of Commonwealth, State and Local Government and industry groups has been established to develop a national approach to streamline and harmonise development assessment procedures in Australia. Three tests have been identified for good development assessment:

Effectiveness:	Will the system or process be able to achieve the desired strategic objectives?
Transparency:	Is the system fair, open and not prone to corruption? Is it accessible to all users?
Efficiency:	Is the system as efficient as possible, having regard to the objectives of effectiveness and transparency?

In Victoria the *Reference Group on Decision-making Processes* (the Whitney Committee) recently provided recommendations on potential improvements to local policy, amended plans and enforcement methods to the Minister for Planning. The Reference Group affirmed its support for the policy based planning system and the ability to set out a transparent strategic vision, and policies and tools for achieving this vision. In submitting its reports the Committee noted that a number of its recommendations were made that went beyond the terms of reference and relate directly to planning processes. Where relevant, these have been incorporated and highlighted within this discussion paper. The Group suggests in its letter accompanying the final report that:

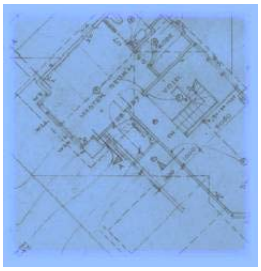
'... the volume of permits required under the VPP based planning system is such that the workloads for both councils and VCAT will become unsustainable without significant system review to simplify and refine processes and requirements.'

A pilot audit of the planning schemes and processes of four Gippsland Councils was initiated in response to identified issues arising from the new format planning schemes. The audit revealed:

'... a system that whilst not in crisis, is nevertheless in need of attention, particularly from a resourcing and process perspective.'

'Respect for statutory timeframes and efficient work practise has diminished, as the demands, workload and consequences of the new format planning schemes have become apparent. The sense of a never ending treadmill often impregnated with dispute and conflict is apparent with consequential implications for job satisfaction; consumer satisfaction; staff burnout and turnover'.

A similar audit was conducted with the City of Knox. The 'users of the system' in this review indicated that they were generally happy with the more strategically based planning permit process operating in Victoria. They believed that the use of statewide controls generally provides consistency and makes the system easier to use across the state. Community groups also praised the system for its community involvement. Issues identified as opportunities for improvement included a need for clearer advertising directions, an ability to reject incomplete applications and the time taken to make amendments to the scheme.



Principles

Desirable principles for planning processes in Victorian might include:

Preparedness - Well prepared applications should be promoted and rewarded.

Difficulty - The level of assessment of a proposal should be proportional to its to its significance.

Timeliness - The process should not impede or unreasonably delay consideration.

Equity - There should be fair and open access to decision making to all substantively affected parties

Effectiveness - Decisions should contribute to the achievement of relevant policy objectives.

Flexibility - Discretion is necessary at times to achieve good planning outcomes.

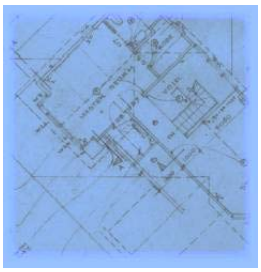
Transparency - All parties should be able to access the relevant requirements with reasonable ease.

Justice - Punishment should fit the crime.

Subsidiarity - Decisions should be made at the lowest reasonable level.

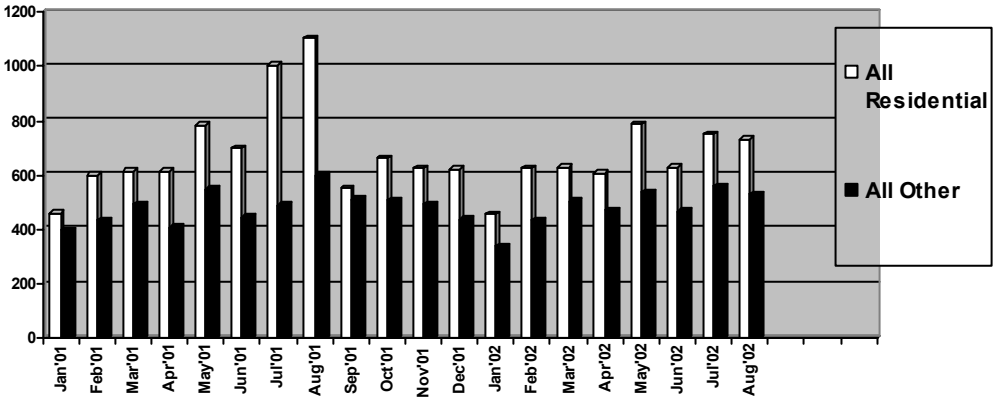
Improvement - There should be a culture of continuous review and improvement.

Each initiative outlined in this discussion paper is referenced against these principles.



The planning permit process

About 45,000 planning permit applications are made to councils across Victoria each year.

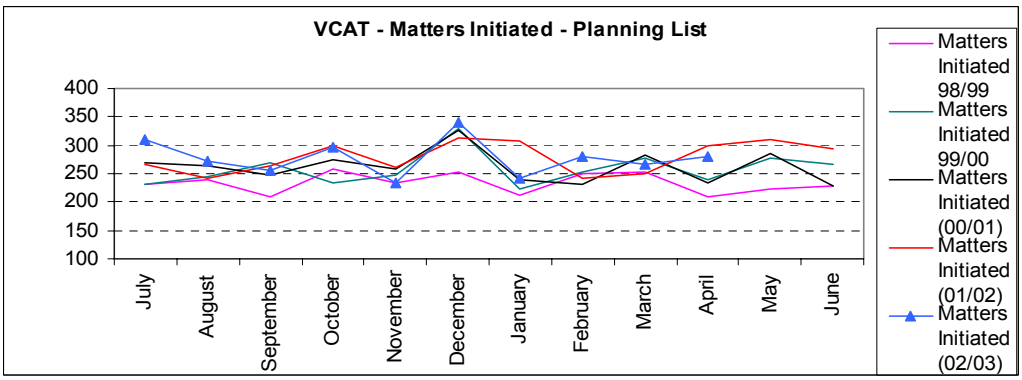


Statewide number of applications submitted Jan '01 to Aug '02
Source: ResCode monitoring

Metropolitan councils receive an average of 1200-1300 applications each month. During the Gippsland Audit project between 600 and 700 applications were received each month by each of the four councils.

About 33% of applications in the metropolitan area receive objections to permit applications. In rural councils about 12% of applications receive objections.

In 2002, 2700 applications for review were made to the Victorian Civil and Administrative Tribunal (VCAT). This represents 6% of all permit applications. An average of 59 VCAT applications were made each year for each metropolitan council and five VCAT applications for rural councils. There is a trend upwards in the number of applications for review each year.



Possible assessment process models

The introduction of strategically based, performance driven planning schemes was not followed by a review of the planning permit process that delivers the decisions on the ground. Victoria has operated with a 'one-size fits all' assessment model since the inception of planning controls. Are the objectives and outcomes sought from new format planning schemes being delivered by the current permit process?

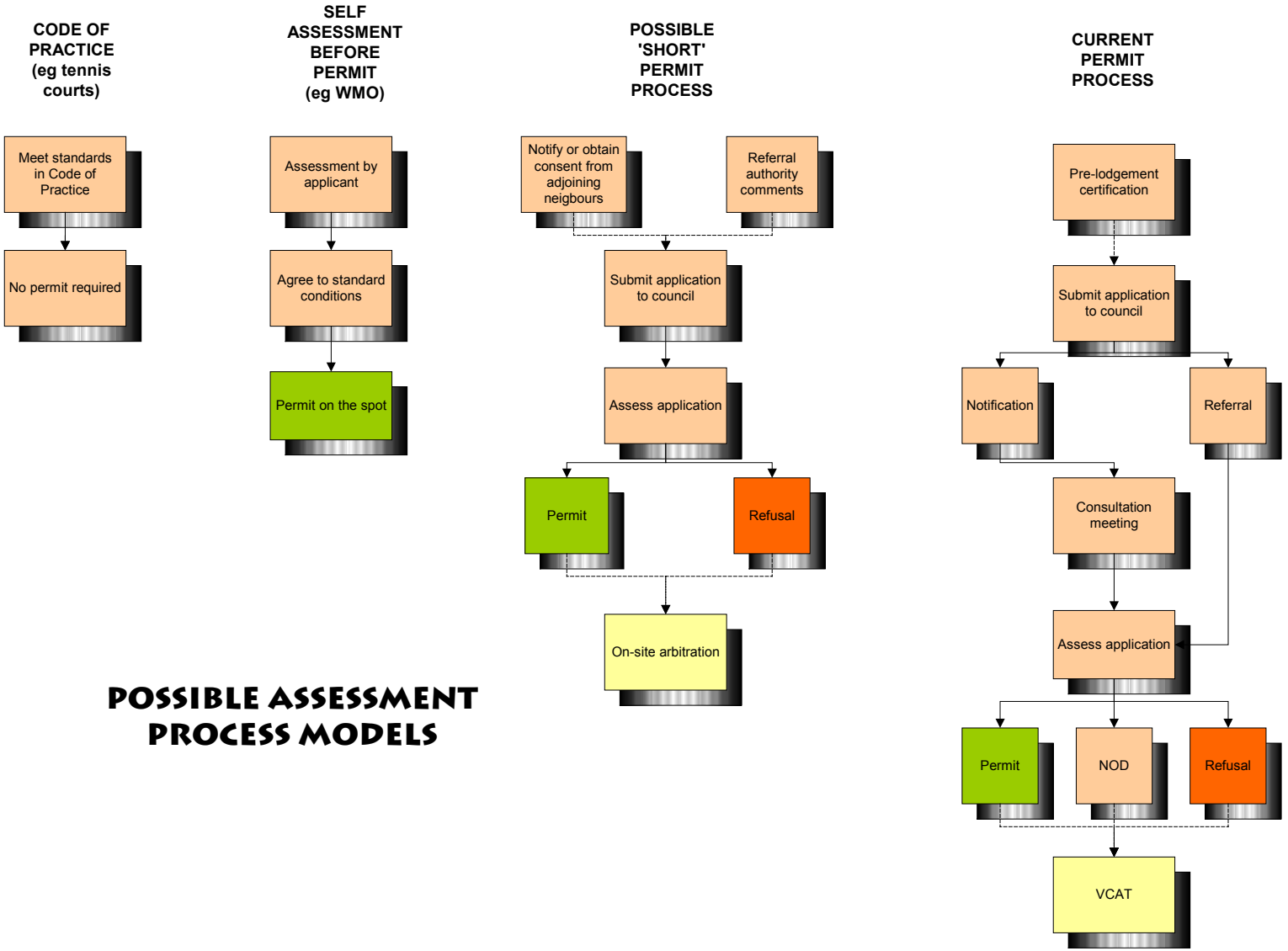
What process?

The initiatives outlined in this discussion paper suggest that several models could be applied to the planning permit process. These models, described in the diagram, reflect the fact that there are varying needs for complexity in the assessment of applications. Different types of applications could be directed to the stream most appropriate.

In particular, a substantial proportion of planning permit applications only require a proposal to be tested against preset performance criteria (eg: is it above the flood level?) and anticipate approval if the criteria are met. This type of application may be able to be determined more efficiently with a simpler process than an application that needs to be measured against complex policy objectives. Streaming applications could also help to ensure that the information and level of detail required for an application is adequate but not excessive for the decision being made.

Who should decide?

The 'principle of subsidiarity' refers to maximum efficiency being obtained by allowing decisions to be made by people at the lowest reasonable level within an organisation. Council currently makes most decisions either directly or under delegation. There is scope to have more decisions made at lower levels, either by professional officers for non-strategic or technical compliance decisions or by applicants themselves, through choosing to meet pre-set criteria or comply with a self assessment process.



POSSIBLE ASSESSMENT PROCESS MODELS

Options for action

The possible options are arranged according to the broad stages of the permit process.

LODGEMENT	A1	Encourage pre-lodgement certification
	A2	Reject inadequate applications immediately
	A3	A new comprehensive application form
INFORMATION ASSESSMENT	B1	Time limit on further information
NOTIFICATION	C1	More precise notice requirements
	C2	Introduce administration fee for objections
REFERRAL	D1	Refine referral requirements
ASSESSMENT	E1	Increase deemed to comply provisions
	E2	Introduce self-assessment opportunities
	E3	Introduce a new short permit process
	E4	Strengthen local policy outcomes
	E5	Model officer reports
	E6	Align the decision maker to the decision
	E7	Make minor changes during assessment easier
	E8	Clarify minor changes after a permit has issued
REVIEW	F1	Introduce guideline judgements
	F2	Reduce substitution of plans at VCAT
	F3	Statement of common grounds
	F4	Introduce conditions review for objectors
MONITORING	G1	Require regular process auditing
	G2	Introduce permit activity reporting

Option A1: Encourage pre-lodgement certification

Action:	Existing process	Proposed process
Encourage the adoption of pre-lodgement certification	▪ Variable quality applications. ▪ High levels of further information requests.	▪ Where a private certifier has certified that an application is suitable for submission and notification, Council initiates immediate notification.

Discussion:

The pre-lodgement certification process offers applicants for planning permits an option of faster processing and decision through lodging a planning application that has already undergone a process of quality assurance.

Three levels of certification have been developed:

Information certification means that in the opinion of the certifier the application is complete and fully documented.

Merits consideration means that in the opinion of the certifier an application meets the requirements of the planning schemes, including the State Planning Policy Framework and Local Planning Policy Framework, sufficient to proceed to public notice without further assessment by Council.

Process certification means that any required pre-lodgement process, including meetings, has occurred.

The greatest benefit for pre-lodgement certification will be achieved through combining information, merits and process certification.

For this pre-lodgement process to be an incentive, Councils must advertise certified applications within a short timeframe, and determine applications in the shortest possible time period following completion of the notification period.

The process gives applicants who are willing to take full responsibility for the quality of their applications at lodgement the opportunity to improve timelines and achieve better development outcomes.

Pilot programs have been undertaken at the City of Glen Eira, Mornington Peninsula Shire and City of Greater Bendigo. The process is now sufficiently well developed to be implemented by other Councils.

Benefits:

Better quality applications

Reduction in further information requests

Pre-application consultation with neighbours

Faster decisions

More chance of approval

Fewer applications for review

Cost savings to applicants

Implications:

Currently there are no legislative implications for the implementation of the pre-lodgement process. Consideration may need to be given to establishing a more formal process of accreditation for certifiers.

Principles:

Preparedness, Timeliness, Effectiveness, Transparency

Option A2: Reject inadequate applications immediately

Action:	Existing process	Proposed process
Introduce the ability to reject an inadequate application early in the process.	▪ If application form is complete and fee submitted an application must be accepted and processed. ▪ A high level of further information requests.	▪ Amend the *Planning and Environment Act 1987* to allow a Council to reject an application that is incomplete, within a specified (short) time of it being submitted. ▪ Complements Option A3 that will set out standard information requirements more clearly.

Discussion:

Currently there is no ability for a Council to reject an application that does not include adequate information, provided the application form is complete, the fee is submitted and a copy of a restrictive covenant or any information stipulated in the planning scheme is provided. This has contributed to the high number of further information requests and perpetuated the belief that anyone can submit a planning application 'scribbled on the back of an envelope'.

The Building Regulations set out mandatory information requirements and includes the ability to reject an application if it is incomplete. Inclusion of a similar provision in the *Planning and Environment Act 1987* would be likely to minimise the number of incomplete applications submitted and reduce the timeframes for consideration of applications.

Council registration procedures would need to change so that an application is reviewed for acceptance prior to being registered as an application. An appropriate time would need to be established for this, but no more than, say, five days.

In order to preserve 'fairness' in the system the ability to apply to VCAT for a review of the decision should exist.

Benefits:

Reduces the number of further information requests.

Helps to cement a 'culture' that applications must be in the best state possible prior to submission.

Reduces the expectation that Council officers will 'fix' inadequately prepared applications.

Encourages applicants to organise pre-application meetings with Council officers to establish what type and level of detail needs to be provided prior to lodging.

Encourages applicants to use the pre-lodgement certification process and get applications right from the start.

Implications:

Amendment to the *Planning and Environment Act 1987* would be required.

Principles:

Timeliness

Option A3: A new comprehensive application form

Action	Existing process	Proposed process
Development and introduction of a new application form	▪ Application form provides very little information for Council. ▪ No guide to description of use or development sought by applicant. ▪ Differing information requirements between Councils. ▪ Variable quality applications. ▪ Confusion about who the applicant is. ▪ No consequences for false or incorrect information except false representation.	▪ Applicants nominate clauses under which permit is sought. ▪ 'Tax pack' application form guides applicants through information requirements, with an ability to 'bypass' questions if irrelevant to application. ▪ Standard information requirements for common types of applications. ▪ Includes an explanatory users guide. ▪ Clarification of who the applicant should be. ▪ A more rigorous description of the proposal assists improving the quality of data in the register.

Discussion:

The current application form is unstructured and provides no assistance to either the applicant or the responsible authority in documenting an accurate description of the proposal or the information necessary for the application. This form has not varied significantly since the introduction of planning regulations and can only be described as primitive when compared to contemporary forms for similar order processes such as making a tax return or applying for a bank loan.

As a consequence:

- A significant proportion of applications generate a request for further information under Section 54 of the *Planning and Environment Act 1987*. The application form provides no assistance to applicants as to what level of information is expected in making an application.
- Inconsistencies and inaccuracies are found in registering and monitoring applications where the proposed use or development is not appropriately described.
- There is confusion about who the 'applicant' is. This creates procedural inefficiencies at VCAT when a representative of the owner/developer changes.
- There is little attention paid to the requirement to sign that all information provided is 'true and correct'.

A new application form could include a:

- More rigorous description of the proposal and the approval being sought (linked to planning scheme requirements).
- Requirement for the applicant to document the principal policies affecting the proposal and the response to them.
- Requirement for the applicant to document the principal decision guidelines that apply to the proposal and how the proposal addresses them.

Benefits:

Clearly communicates expectations to an applicant when the application is being prepared.

Ensures consistent essential information is submitted at the start.

Reduces the need for further information requests.

Creates a greater 'seriousness' in submitting a planning application.

Implications:

Development of new application form in consultation with Councils.

Amendment to the *Planning and Environment Regulations*.

Principles:

Preparedness, Effectiveness, Transparency

Option B1: Time limit on further information

Action	Existing process	Proposed process
Introduction of a time limit on the submission of further information	▪ A substantial number of applications have not been determined because of outstanding further information requirements.	▪ Amendment to the *Planning and Environment Act 1987* to introduce a 28 day time limit on the submission of further information.

Discussion:

Section 54 of the *Planning and Environment Act 1987* enables both Council and any referral authority to request further information, within a defined time period, prior to determining an application.

A substantial number of applications are effectively 'on-hold' while an applicant responds to a request for further information. An extended period of inaction for an application causes the perception that timeframes for planning permit applications are unnecessarily lengthy. It also results in a considerable administrative burden of monitoring further information requests and making second or third requests. The numbers of applications that are 'live' at any point in time is inflated by applications for which no response to a further information request has been received, and it is time consuming for planners to have to pick up an application after a long period.

An application should not be lodged until a proposal is a serious one. Combined with other initiatives such as pre-lodgement certification (Option A1) and a more comprehensive application form (Option A3) there should be a reduced need for further information requests. Also, any applicant of a serious proposal should be in a position to respond within a reasonable time. A requirement that after 28 days of a request for further information the application would automatically lapse. Councils would be able to extend this time period for applicants where a fair and reasonable request is made in writing. Again to ensure 'fairness' in the system the ability for the applicant to seek review of this decision through VCAT should be provided.

Benefits:

Removes outstanding applications that are not being actively pursued and avoids administrative burden of follow up.

Promotes the preparation of complete applications at submission and use of the pre-lodgement certification process.

Implications:

Legislative change to Section 54 of the *Planning and Environment Act 1987* would be required.

Principles:

Preparedness, Timeliness

Option C1: More precise notice requirements

Action	Existing process	Proposed process
More precise notice requirements	▪ Most applications are required to be notified. ▪ The extent of notification required for different types of applications varies across Councils. ▪ Some zones have exemption from notification requirements. ▪ Any person who may be affected by the grant of a permit may object.	▪ Identify a range of notification levels aligned to types of application to ensure appropriate notification consistent with the nature of the application. ▪ Provide the ability to obtain 'neighbours consent' for certain types of applications in advance. ▪ Change the wording of the *Planning and Environment Act* to say any person affected may make a 'submission' rather than an 'objection'. ▪ Prepare a submission form that requires a submitter to be more specific about their concerns and potential changes that could be made to address the concerns.

Discussion:

In addition to Section 52 of the *Planning and Environment Act 1987*, a planning scheme can set out specific notice requirements for particular types of applications. To date only exemptions to notification have been specified in planning schemes.

If no specific notification is set out a Council is required to form an opinion whether material detriment will be caused to any person. If Council forms an opinion that material detriment may be caused to one or more adjoining owners or occupiers, notice must be given to all adjoining owners and occupiers unless the Council specifically forms the opinion in each case that material detriment will not be caused.

The Act does not specify what matters may be taken into account when deciding whether material detriment may be caused. Issues such restriction of access, visual intrusion, unreasonable noise, overshadowing or other specific reasons may be considered to cause detriment.

There has been a tendency for Councils to extensively notify almost all applications. This has emerged in an environment where notification decisions are constantly questioned, sometimes in a legal environment, by objectors.

In South Australia, three classes of notification are prescribed. These are applied to different types of application. Broadly, they are:

- No notification
- Notification of adjoining and adjacent owners
- Council decides, but must include adjoining and adjacent owners and a notice in a newspaper.

Adopting this approach in Victoria, notification requirements for particular types of applications could be specified in schemes, reducing the need for Councils to make individual decisions about material detriment in many cases and creating greater certainty for all stakeholders about who will be notified.

In addition, an applicant cannot currently avoid the need for notice even when it is known that neighbours do not oppose a proposal. Where notice requirements are precisely specified, the opportunity arises to allow that no notice is required where the consent of the relevant parties has been obtained in advance.

The *Planning and Environment Act 1987* provides for any person who may be affected by the grant of a permit to 'object' to the grant of the permit. The terminology is adversarial and encourages people to 'object'. If the word 'submission' was substituted this may encourage more people to make 'positive' submissions to a planning application.

Any objection to an application must be in writing, state the reasons for objection and how the objector would be affected by the grant of a permit. The later requirement is particularly poorly addressed. The development of a structured objection form that prompts submitters to think and demonstrate how they are specifically affected would be beneficial to the decision making process.

Benefits:

Removes uncertainty about when and how notification should occur for applications.

Reduces number of applications that are unnecessarily advertised and speeds up advertising decision.

Enables applications to be assessed quickly if neighbours consent is achieved.

Clearly identifies the reasons for objection to assist in decision-making.

Implications:

Amendment to planning schemes to prescribe types of notification.

Legislative amendment to the Section 52 of the *Planning and Environment Act 1987* and to the *Planning and Environment Act Regulations*.

Principles:

Difficulty, Timeliness

Option C2: Introduce administration fee for objections

Action	Existing process	Proposed process
Provide for a fee to be charged for those submitting a 'objection'.	▪ There is currently no fee. ▪ Objections are often submitted through a 'pro forma' letter.	▪ Change a nominal fee per objection.

Discussion:

Often 'pro forma' letters of objection are submitted to Councils in the view that the more objections submitted the more seriously the responsible authority will consider the issues. Unfortunately, this can be true where decision-making delegation is based on the number of objections received. This practice leads to substantial processing costs for Councils but also for VCAT if a matter proceeds further and individual objections continue to be made. A charge, through the *Planning and Environment Fees Regulations*, for the submission of an objection would encourage objectors to make joint submissions if their concerns are similar. Section 57(3) of the *Planning and Environment Act 1987* allows for a nominated person to be the contact for all correspondence with the responsible authority.

It is not intended that the introduction of a charge would reduce access to the planning system but rather encourage joint submissions and indicate a greater seriousness in making a objection.

Benefits:

Encourage the submission of joint objections with one contact person.

Increase the seriousness with which objectors make submissions.

Implications:

Amendment to the *Planning and Environment Fees Regulations*.

Principles:

Timeliness, Equity

Option D1: Refine referral requirements

Action	Existing process	Proposed process
Review referral requirements in planning schemes to combine all referrals in one location.	▪ Referral requirements are scattered throughout planning schemes. ▪ There is confusion between referral to and notification of statutory authorities. ▪ Requirements do not include thresholds for avoiding unnecessary referral.	▪ List all referrals from zones, overlays and local provisions into a single combined list. ▪ Clarify all referral requirements and require thresholds to be specified below which referral is not required.

Discussion:

Referral of planning permit applications under Section 55 of the *Planning and Environment Act 1987* has a significant impact on the time and resources of both the responsible authority and the referral authority.

Existing referral requirements are difficult to find in planning schemes, often poorly written, and usually do not include reasonable thresholds for avoiding referral of unnecessary matters.

A common statutory 'home' in planning schemes for all referral requirements would improve the way in which local referral requirements are identified. Clause 66 of all planning schemes sets out referrals required by the State but does not include referrals under zones, overlays or local provisions. This clause could be expanded to list all referral requirements, similarly to the way Clause 81 lists all incorporated documents mentioned in the scheme.

Review of Clause 66 to clarify arrangements in relation to zone, overlay and local referrals would contribute to more effective referral arrangements in the following ways:

- A clearer distinction between Section 55 referrals with associated rights to veto an application and other processes of seeking comments or notification. There is ongoing confusion about whether applications are being referred under Section 55 or whether notice is being given under Section 52.
- Elimination of unnecessary referrals and encouragement of written standard agreements between councils and referral authorities. Many local referrals do not have the arrangement that allows exemption from referral if a permit application satisfies the requirements or conditions agreed in writing between the referral authority and the responsible authority. Any new clause would make such referrals subject to these arrangements and also list any written agreements with referral authorities.
- Update names of referral authorities to reflect new organisational arrangements.

Benefits:

Makes reading the requirements of planning schemes easier and reduces the risk of omitting referrals.

Reduces the administrative task of undertaking referrals where they are not necessary.

Clarifies the distinction between referral and notification of authorities.

Implications:

Amendment to the Victoria Planning Provisions (VPP) and all planning schemes to combine all referral requirements.

Principles:

Preparedness, Timeliness

Option E1: Increase deemed to comply provisions

Action	Existing process	Proposed process
Increase the deemed to comply provisions in planning schemes.	▪ Some deemed to comply provisions exist in planning schemes.	▪ Make wider use of deemed to comply provisions to avoid using resources on matters agreed to be acceptable.

Discussion:

Deemed to comply provisions allow exemption from a permit requirement where certain standards are met. A number of Particular Provisions in the VPP, such as car parking, home occupation, telecommunications and private tennis courts, include deemed to comply provisions. The majority of such provisions have a Code of Practice outlining requirements.

The matters considered for deemed to comply provisions would need to be relatively straight forward and not involve discretion in decision-making. Codes of Practice may also need to be developed. Matters such as ease of use will dictate those requirements that are appropriate.

Benefits:

Enables compliance with standard requirements without the need for lengthy processing times.

Implications:

Identification of matters most appropriate to deemed to comply provisions in consultation with councils.

Development of Codes of Practice with relevant authorities where needed.

Principles:

Difficulty, Timeliness

Option E2: Introduce self assessment opportunities

Action	Existing process	Proposed process
Expand the role of self assessment provisions in schemes.	▪ The concept of self assessment has not yet been fully developed in planning schemes.	▪ Refine self assessment provisions and apply to appropriate matters.

Discussion:

Self assessment provisions can apply in circumstances where a permit is required but streamlined processing of the application can occur through agreement to standard conditions. This may significantly reduce, for example, the need for external referral of an application.

The Wildfire Management Overlay (WMO) is the first introduction to this form of control. The WMO and associated Applicant's Kit produced by the Country Fire Authority provide a number of assessment mechanisms dependent on the type and proximity of vegetation surrounding a building. The overlay is being applied progressively across Victoria.

Self assessment could potentially be applied to proposals in flood prone areas, and some heritage and environmental matters.

Self assessment would be appropriate in circumstances where the matter requiring a permit was largely procedural but where a check for compliance is desirable. Self assessment introduces a level of council intervention above that of deemed to comply provisions which require no sign-off, but allows the applicant to choose whether or not to accept a straightforward approach or pursue a more complex process.

Benefits:

Provides for greater certainty in planning scheme requirements and intended outcomes to both applicants and assessors.

Increases the number of matters that can be quickly approved by measuring against simple tests.

Reduces resources spent by both Council and external referral authorities.

Implications:

No legislative amendment would be required.

Assessment mechanisms and standard conditions would however need to be developed in conjunction with Councils and relevant referral authorities.

Principles:

Difficulty, Timeliness

Option E3: Introduce a new short permit process

Action	Existing process	Proposed process
Introduce a new short permit process for applications that are straight forward or procedural.	▪ The same permit process is applied to all applications irrespective of scale.	▪ A new short permit process would allow identified types of applications to undergo a streamlined permit process. ▪ This would include a shorter timeframe for consideration, notification and referral prior to submission of an application, and on-site arbitration.

Discussion:

The *Planning and Environment Act 1987* provides for only one permit process to be applied to all applications, whatever their scale. While the Act outlines different components, such as notification and referral, the tendency has been to apply the same approach to all applications. Process requirements for applications that involve little or no consideration or interpretation of policy and are largely procedural can be made unnecessarily complex.

A possible new streamlined or 'short' process is set out in the diagram. It is envisaged to involve:

- A more detailed application form (Option A3).
- Referral responses (if required) to be sought by applicant.
- Ability for Council to not accept an application if all relevant information is not provided (Option A2).
- Alternative notification procedure to allow signatures from adjoining properties and allow prescribed notice to be given by the applicant as part of the lodgement process (Option C1).
- Application to be assessed under delegation (Option E6).
- A decision within 30 days. Refusal or permit only (no NOD).
- Applicant and objectors have seven days to appeal decision to Council.
- Appeal takes place in the form of a site meeting. A decision is made on the spot.

To maintain the integrity of the review system in Victoria on-site arbitration would need to be undertaken by VCAT. On-site decisions are made by both the Land and Environment Court in NSW and the Building Appeals Board in Victoria.

Benefits:

Streamlines timeframes for applications of a minor or procedural nature.

Matches time and expense of the approval process to the scale of the proposal.

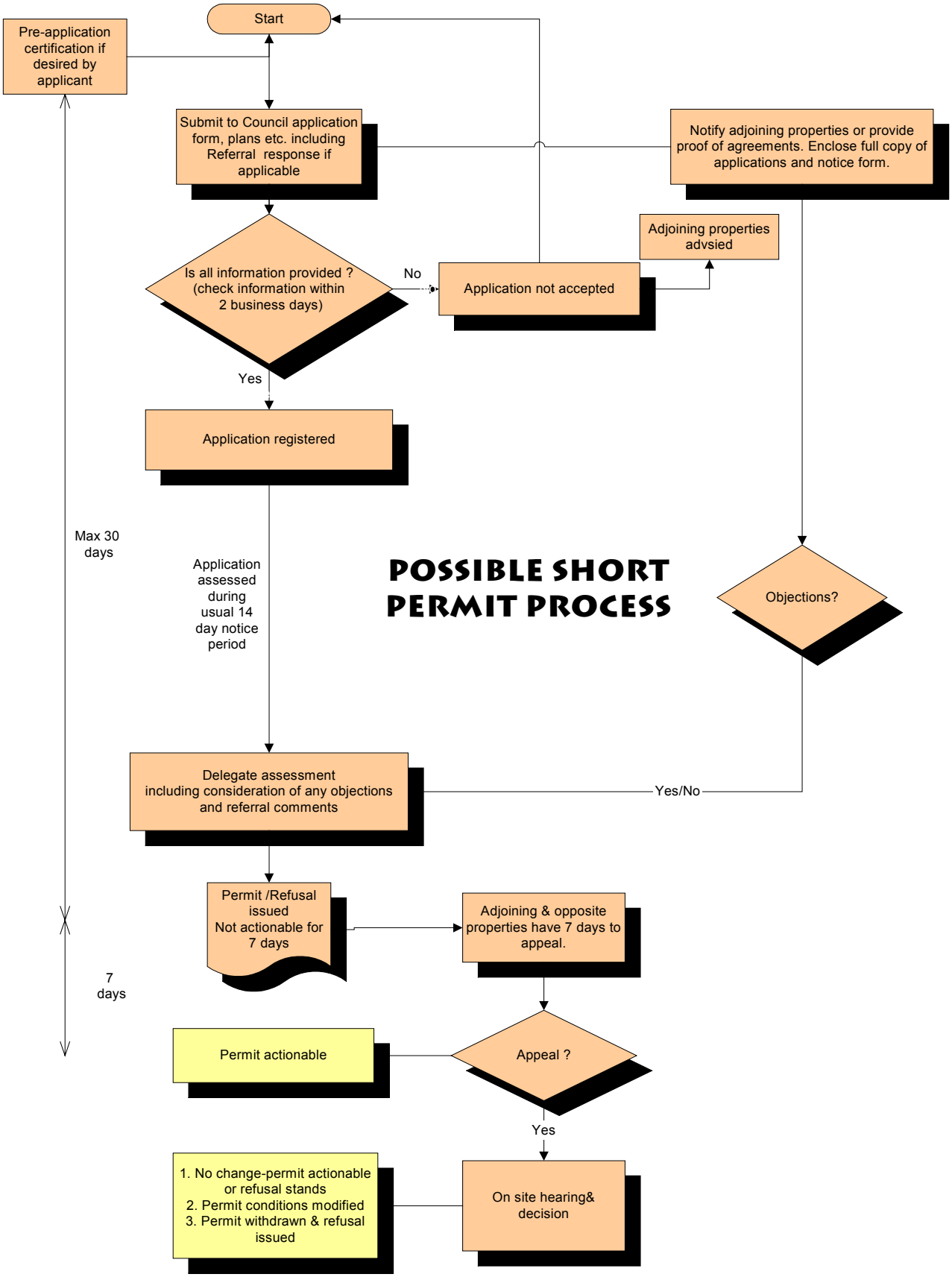
Implications:

Amendment to the *Planning and Environment Act 1987*.

Alterations to VCAT processes to facilitate on site decisions within a short timeframe.

Principles:

Preparedness, Difficulty, Timeliness


Start
Pre-application certification if desired by applicant
Submit to Council application form, plans etc. including Referral response if applicable
Notify adjoining properties or provide proof of agreements. Enclose full copy of applications and notice form.
Is all information provided ? (check information within 2 business days)
No
Application not accepted
Adjoining properties advsied
Yes
Application registered
Max 30 days
Application assessed during usual 14 day notice period
POSSIBLE SHORT PERMIT PROCESS
Objections?
Delegate assessment including consideration of any objections and referral comments
Yes/No
Permit /Refusal issued Not actionable for 7 days
Adjoining & opposite properties have 7 days to appeal.
7 days
Permit actionable
Appeal ?
Yes
1. No change-permit actionable or refusal stands
2. Permit conditions modified
3. Permit withdrawn & refusal issued
On site hearing& decision

Option E4: Strengthen local policy outcomes

Action	Existing process	Proposed process
Improve the clarity and useability of local policy in planning schemes.	▪ There is a view that the current balance in the system has gone too far in favour of flexibility and performance based controls to the detriment of certainty. ▪ There is uncertainty about the relative weight to be given to policies that have yet to undergo serious testing in the community as opposed to policies in the planning scheme. ▪ There is insufficient guidance about how to balance policy in decision-making.	▪ Greater level of precision in policy statements. ▪ Amendment of Section 60 of the *Planning and Environment Act 1987* to establish a hierarchy of matters for consideration clearly highlighting the pre-eminence of planning scheme policy. ▪ Amend the *Planning and Environment Act 1987* to provide additional criteria to assist in balancing and prioritising policies.

Discussion:

The Reference Group on Decision-making Processes (the Whitney Committee) has made a number of recommendations about using and interpreting local policy. In summary, the Reference Group believes that *'The policy-led decision-making framework provided by the VPP model creates the ability to set out a transparent local strategic vision and is of benefit to all parties participating in the planning process'*.

A wide variety of matters need to be taken into account when deciding whether a planning permit should be granted and what conditions should apply. The particular facts of each application must be assessed against the background of all applicable policies. This has, however, resulted in varying expectations about how policy should be implemented and the weight to be given to different policy documents.

The Reference Group is of the view that greater precision is required in policy (both State and local). The *Format of Municipal Strategic Statements* and *Writing a Local Planning Policy* Practice Notes, while helpful, are expressed in a manner that generally promotes policies to be prepared in a non-precise manner.

The Reference Group suggests that it is important that policies contained within the LPPF be recognised as the fundamental policy basis of planning schemes and that their status should not be undermined by 'policies' which may be adopted with little or no consultation with stakeholders. This should be done by presenting a clear hierarchy of documents to be considered in decision-making and additionally removing the reference to 'policy statement' in Section 60 of the Act to eliminate any confusion as to what should be viewed as 'policy'.

Benefits:

Refinement of the policy based planning schemes so that all parties in the planning system are aware of the basis of a decision.

Consistent decision making between Councils and VCAT.

Implications:

Amendment to the *Planning and Environment Act 1987* in consultation with Councils.

Principles:

Difficulty, Effectiveness, Transparency

Option E5: Model officer reports

Action	Existing process	Proposed process
Prepare model officer reports for Councils	▪ Each Council has an individual approach to Council reports and delegation reports. ▪ There is variety in quality and detail.	▪ Standard reports for different types of applications clearly setting out the policy context and decision-making criteria.

Discussion:

An increase in the policy considerations and controls applying to individual sites has resulted in significant workload for Council planners when it comes to assessing an application and report writing.

Councils vary considerably in relation to standard report formats and there is the potential to either go overboard or to miss relevant considerations.

An effective report should aim to identify the relevant strategic issues and only include the detail necessary to make a decision.

The development of model officer reports for different types of applications should help to clarify the relevant policy considerations and to significantly reduce the time required to write an assessment report. Models reports for the following types of applications could be developed:

- Multi-dwellings
- Single dwellings
- Subdivision
- Industrial
- Business
- Retail
- Removal of native vegetation
- Signage

Benefits:

Efficient time management for planners, by focussing report writing that concentrates on the main policy and scheme considerations.

Implications:

Consultation with Councils to confirm scope of reports.

Principles:

Timeliness

Option E6: Align the decision maker to the decision

Action	Existing process	Proposed process
Preparation of model delegation guidelines.	▪ Level of delegation to officers varies considerably across Councils.	▪ Preparation and promotion of model delegation guidelines to encourage decisions to be made at the most effective and efficient level.

Discussion:

The effective functioning of the planning system relies on the delegation of decision-making responsibilities to senior council planners. It enables Councillors to focus on their role as policy makers and reduces the administrative burden upon Council planners. This is consistent with the *Councillors Guide to Planning* produced by the Municipal Association of Victoria.

If planning schemes provide clear policy direction there should be no need for a Council to decide the majority of applications. However, there are times where an application will require variation of policy or has significant policy implications and Council will need to make the decision.

There is considerable variation of delegation across Councils and delegation often changes with the introduction of a new Council. Model delegations could be prepared that demonstrate effective administrative arrangements to ensure that decisions are made at the most effective and efficient level.

Benefits:

Increases emphasis on Councillors policy-making role rather than on individual applications.

Empowers Council planners.

Quicker decisions for matters consistent with policy or of a technical nature.

Create greater levels of consistency and certainty in decision-making and provide more guidance in balancing policies.

Reduces time spent on report writing and focus on key scheme and promotes policy considerations.

Implications:

Consultation with Councils about model delegations.

Preparation and publication of model delegation guidelines.

Principles:

Difficulty, Subsidiarity

Option E7: Make minor changes during assessment easier

Action	Existing process	Proposed process
Provide structure around making changes to an application during assessment.	▪ Councils make a judgement about whether changes made should require a new application. ▪ There is a practice of putting substantial 'Condition 1' requirements to amend plans.	▪ A formal opportunity is provided to the applicant to amend plans. ▪ If plans are amended then re-notification may be triggered. ▪ A decision is made on the amended plans.

Discussion:

The reality of the planning application process is that, until a permit applicant has a clear and definite statement of a Council's position, the applicant is unlikely to offer concessions unless there is a good prospect of success. At present this point is often after a formal decision has been made, whether by delegation or at a Council meeting.

This situation exists, in part, because of the absence of a formal framework in the *Planning and Environment Act 1987* to consider amendment to plans after notification. While conditions on planning permits often achieve the same ends, a decision is made on the basis of the original plans. There is also no formal opportunity for re-notification although this may sometimes occur in practice. In contrast the *Victorian Civil and Administrative Act 1998* enables VCAT to consider an application that is different through amendment after notification.

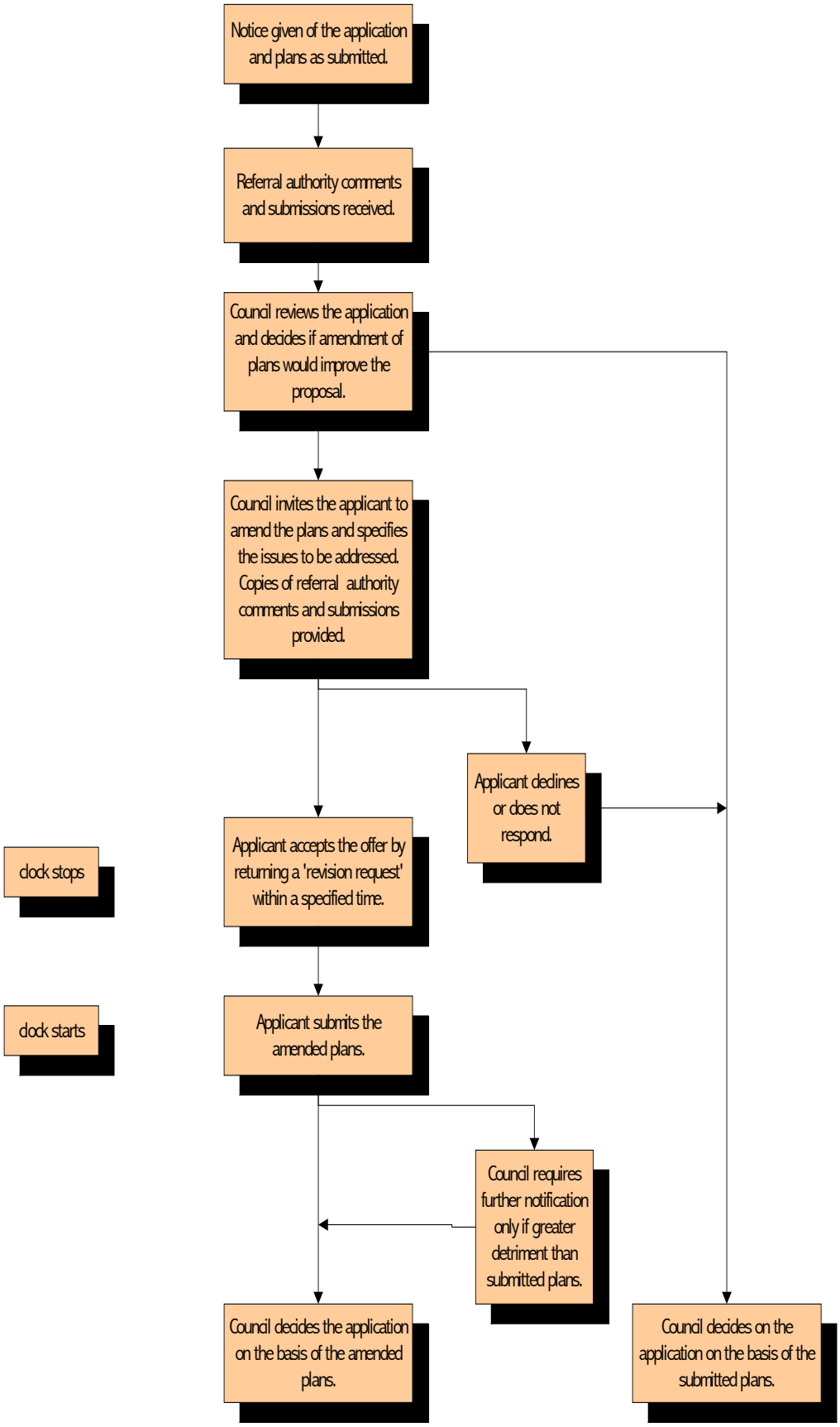
The Reference Group on Decision-making Processes (Whitney Committee) provided in Report 2: Substitution and Amendment of Plans an option (not supported by all members) that might encourage a decision to be made on the best possible plans. The suggestion was to create a formal opportunity to adjust plans after advertising but before the Council decision. Outlined in the flowchart following is a possible process that would:

- Create a point, at which council can review an application, set out its requirements for adjustments, provide copies of objections and referral authority responses and invite the applicant to submit amended plans that address Council's concerns. This notice would be provided by a delegated officer to ensure that applications are not unreasonably delayed by having to go to two council meetings.
- Provide an opportunity for the applicant to formally respond (via a revision request) and amend the plans in response to the identified issues.
- The opportunity could be provided for Council to determine whether any additional detriment would be caused by the amended plans and whether any further notification was necessary.
- 'Stop-the-clock' from between the notice to the applicant and the fulfilment of any notification requirements, so that the application could be improved without penalty to the responsible authority's statutory decision time.
- Allow the final decision to be made on the basis of the amended plans.

This is not really a new process. It simply provides a formal procedure for an already common informal practice. In addition it may assist to reduce the number of applications going to VCAT.

In combination with other initiatives proposed such as pre-lodgement certification (Option A1), the new comprehensive application form (Option A2) and the ability to reject an application if all information is not provided (Option A3) the likelihood of amendments to plans being required during the assessment process should be reduced.

Possible 'revision request' process



If this option were pursued, a priority listing system could also be introduced at VCAT to fast track review hearings in the case of applications that have followed the 'revision request' process before the council decision.

Benefits:

Allows Council to consider an amended plan that more accurately reflects the proposal that was being determined.

Council would make decisions on final plans and Councils and VCAT would be considering the same final proposal.

Implications:

Amendment to the *Planning and Environment Act 1987*.

Priority listing at VCAT would need to be established.

Principles:

Equity, Flexibility

Option E8: Clarify minor changes after a permit has issued

Action	Existing process	Proposed process
Allow consideration of the particular changes only rather than a new application.	▪ Councils consider whether amendment to a permit or plans can be done under Section 73 of the *Planning and Environment Act 1987*. The judgement is often whether any increase in detriment will be caused.	▪ More flexible ability to amend plan without being subject to a new application. ▪ This could include re-notification.

Discussion:

A number of Councils report that application plans often change one or more times between issue of the permit and commencement of development. Councils often feel obliged to fully reassess new plans, so the resource implications can be equivalent to a fresh application.

Councils have varying processes for determining at what point a new permit is required or when a change is considered a minor amendment under Sections 72 & 73 of the *Planning and Environment Act 1987*. Reluctance to amend plans under Section 73 can perhaps be attributed to the lack of formal structure that exists to consider an amendment. There is no means of notification and a Council must make the judgement about whether any material detriment may be caused.

The capacity for an applicant to apply for the particular change being requested rather than assessing the whole development again could be beneficial. A 'permit to amend a permit' is one response to this. Alternatively, it may be possible to prepare a plan that highlights only the area of plan to be changed (an insert plan).

If it is accepted that an increase in detriment may potentially occur through the amendment of plans it is reasonable that those affected have the opportunity to be re-notified, however this should be limited to only those affected by the change.

Benefits:

Reassessment of a proposal would not be required and attention could be focussed on the particular change(s).

Implications:

Legislative change to Section 73 of the *Planning and Environment Act 1987*.

Principles:

Equity, Flexibility

Option F1: Introduce guideline judgments

Action:	Existing process	Proposed process
Review	▪ Interpretation of policy can vary from member to member and between Council and VCAT.	▪ Introduction of guideline judgments to promote greater consistency.

Discussion:

The Reference Group on Decision-making Processes considers the practice of providing principles for decision-making on a particular matter would be extremely useful to both local government and VCAT members. Consistent interpretation of policy is difficult if there are no formal procedures for reporting significant decisions.

The use of Guideline Judgments has been implemented in the criminal justice system in relation to the subjective matter of sentencing. A similar practice could be instigated within the planning system. VCAT proposed this initiative to the Reference Group. It is proposed that:

- Three member 'guideline' tribunals could be constituted where there are issues upon which members of VCAT and the broader planning community would be assisted by a statement of guiding principles.
- Wherever possible, the presiding member should be a judge.
- Guideline decisions will not be binding, however, the intention is that they should be followed in the interests of consistency.

This practice does occur informally, however guiding principles are not always visible. Providing access to guideline decisions would increase effectiveness and help reduce workload and hearing times at VCAT.

Benefits:

Improve consistency in decision making amongst VCAT members and councils.

Reduce the workload and hearing times at VCAT.

Implications:

Implementation by VCAT.

Principles:

Effectiveness, Transparency

Option F2: Reduce substitution of plans at VCAT

Action	Existing process	Proposed process
Reduce the number of instances where plans are substituted at VCAT.	▪ About 25-33% of applications include the substitution of plans at VCAT. ▪ While rarely challenged this practice causes considerable frustration and delay at VCAT.	▪ Identification of a means of reducing the number of instances where plans are substituted based on options outlined.

Discussion:

The Reference Group on Decision-making Processes (the Whitney Committee) considered the issue of substitution of plans at a VCAT hearing. Wherever possible the opportunity for plan refinement should occur at the front end of the planning permit process rather than prior to a VCAT hearing. While plans do not often change to the degree that they are 'transformed', it is common however that they are not in their best form at the time of a Council decision.

The Reference Group considered that the ability to amend plans during the planning application process can be beneficial as improvements can be made that lead to better planning outcomes. The Reference Group made three alternative suggestions to reduce the practice of substituting plans at VCAT.

- Preparation of a guideline (potentially a guideline judgment – Option F1) exploring the concept of the 'transformation' of plans. This already exists in case law (Addicoat and Fox) but clarification of circumstances in which the changes are so substantial that a new application should be submitted would be of assistance to Councils and VCAT and act as a disincentive to applicants seeking to 'bypass' council for a decision. A fee, equivalent to the initial application fee, for the substitution of plans at VCAT could also be introduced. This payment could be directed back to councils to compensate for any required reassessment of plans.
- Introduce a 'gatekeeper' role for Councils in determining whether plans should be substituted at VCAT. This option would require that both VCAT and Council consent before any change to plans can be considered. This consent would need to be exercised by a delegated officer to avoid unnecessary delays. This option may have implications on procedural fairness.
- Introduce a point in the permit process at which Council can review an application, set out its requirements for adjustments and invite the applicant to submit amended plans that address Council's concerns (Option E7). This option reduces exposure of Councils that may have already made decisions on the basis of amended plans after notification. A priority listing system could also be introduced at VCAT to reward applications that have followed the 'revision request' process before the council decision with a faster hearing.

It may also be possible, although it was not recommended by the Reference Group, to introduce a legislative amendment to prevent the substitution of amended plans except for 'minor' changes. The term 'minor' would require adequate definition to avoid the need for lengthy preliminary hearings.

Benefits:

Ensures final decision is made on the basis of the best possible plans and reduces need for substitution of plans at VCAT.

Implications:

Potential legislative change to the *Planning and Environment Act 1987*.

Principles:

Difficulty, Equity, Flexibility

Option F3: Statement of common grounds

Action:	Existing process	Proposed process
Investigate the introduction of a 'statement of common ground'.	▪ The range of issues applicable to an application can be considerable. ▪ There is no formal means to identify the issues not in dispute between Council, the applicant and objectors.	▪ Develop and trial the use of statement of common grounds for all parties.

Discussion:

The Reference Group on Decision-making Processes suggested that the recent 'statement of common ground' initiative of the British appeals system should be investigated. A statement sets out the matters of agreement between a Council and the applicant so that, in any subsequent appeal the issues to be debated are confined to 'outstanding' issues. This may assist formalising issues for consideration, reducing the time and costs associated with VCAT hearings and focusing each party's attention on the issues in dispute.

The UK model works in an environment where there are no 'third party' review rights. It may be more difficult to initiate this mechanism where there is more than one party raising concern such as the Victorian system. Nonetheless, there have been recent examples of this happening voluntarily been parties in Victoria in matters before the VCAT.

Benefits:

Narrowing of issues at a VCAT hearing could help to reduce the time and costs associated with a hearing.

Parties would need to accurately articulate their issues of concern.

Implications:

Consultation with Councils and VCAT to determine an appropriate structure for a statement of common grounds.

Amendment of the *Planning and Environment Act 1987* to introduce statements of common ground.

Principles:

Equity, Effectiveness

Option F4: Introduce conditions review for objectors

Action	Existing process	Proposed process
Enable an objector to apply to review the conditions of a Notice of Decision to Grant a Permit.	▪ Objectors can make application for review against a Council's decision to issue a permit.	▪ Objectors are given the ability to make application for review against the conditions of a Notice of Decision to Grant a Permit.

Discussion:

Objectors are faced with one option when in disagreement with a Council's decision to grant a permit. They must make an application to review the decision. As a result the whole proposal must be considered by VCAT. This can be a costly and time consuming exercise for both the appellant and the applicant. If the opportunity were available to make an application for review only against particular conditions this could reduce the time and resources required to undertake a full review.

Benefits:

The VCAT hearing process can focus on the conditions in dispute in contrast to the whole proposal.

Timeframes for VCAT decisions could be shorter.

Implications:

Amendment of the *Planning and Environment Act 1987*.

Principles:

Equity, Justice

Option G1: Require regular process auditing

Action	Existing process	Proposed process
Require regular process auditing	▪ Compulsory review of the MSS every 3 years. ▪ No requirement for Councils to review existing permit processing procedures.	▪ Amendment to *the Planning and Environment Act 1987* to require a review of municipal councils permit processing procedures as well as MSS.

Discussion:

Section 12A (5) of the *Planning and Environment Act 1987* requires a Council to review its Municipal Strategic Statement (MSS) at least once every 3 years. Currently, there is no requirement for Councils to review their local planning provisions or planning permit processes.

A periodic review or audit of planning processes from registration through to decision making on an application (preferably done internally by an audit committee) would be valuable in the overall monitoring of the appropriateness or otherwise of local planning provisions, internal planning procedures and consistency in decision making. This in conjunction with the existing MSS review requirement would promote more efficient methods to process planning applications as well as good strategic decision-making.

The audit would involve the use of a standard model and guideline to carry out an internal audit or "health check" involving the following steps:

- Senior planners to complete a questionnaire reviewing existing procedures including; registration, staff workloads, assessment and decision making practices to identify areas for improvement and benchmark goals.
- A series of workshops interviewing the four main stakeholders of the system including consumers (applicants and objectors), senior management, planning teams and councillors to identify perceived strengths and weaknesses with the Local Planning Policy Framework (LPPF) and permit processing procedures.
- Review and analysis of the reports of panel and advisory committees, particularly at the introduction of the new format planning scheme.
- Review and analysis of VCAT decisions.

Following from an analysis of the quantitative and qualitative information drawn from these steps councils would then identify key areas for modification and review of their planning schemes and processing procedures. It would be mandatory that improvements be made to the key areas identified within a specific time frame.

Benefits:

Promotes best practice in the day-to-day operation of the planning permit process to ensure more efficient, effective and consistent decision-making by all Councils.

Identifies non value-adding controls in the LPPF of all Planning Schemes which can be modified or removed to assist a more efficient system.

Implications:

Legislative change to Section 12A of the *Planning and Environment Act 1987* would be required.

Principles:

Improvement, Effectiveness

Option G2: Introduce permit activity reporting

Action:	Existing process	Proposed process
Requirement for Councils to annually report identified planning permit statistics.	▪ Requirement to keep register but no means of compiling information from all Councils.	▪ Compile data about the permit process including numbers, types of applications and timeframes for decision-making and publish on a regular basis.

Discussion:

It is proposed that a quarterly report be developed and published on current planning permit activity using statutory reporting systems.

In Victoria a comprehensive picture of building activity is provided through the quarterly publication *Building Activity Profile* published by the Building Commission, this is aggregated annually into *Building Victoria*. Information on subdivision activity is provided through the *Residential Land Bulletin* published quarterly by the Department of Sustainability and Environment and this is complemented by *Residential Redevelopment* in Melbourne that provides an illustration of redevelopment trends and opportunities in metropolitan Melbourne.

Planning approval normally precedes subdivision or building activity and can be considered as an earlier indicator of activity (or the lack of it) in the development cycle.

There is, at present, no regular or consistent reporting system in place to provide this information. Issues include:

- The matters specified for inclusion in a planning permit register are not a complete set of the data of interest.
- Responsible authorities hold the data in different databases, formats and media that are not compatible.
- The registers are not always up-to-date.
- Some software packages used by responsible authorities either do not collect all the required data or are unable to generate the required reports.
- The data is not aggregated across the sector.
- There is no established agreement for providing and collecting the data.

It is proposed that initially the data be collected through use of the existing planning permit register. The Department of Sustainability and Environment and the Municipal Association of Victoria have been involved in the development of longer term systems which will be able, as an ancillary output, to provide the information sought. Initiatives such as the SPEAR project and the Business Processing and Data Modelling Project have clearly established the path to an online register. However, these depend on the final commitment of funds and will only provide the information within 2-3 years.

Agreement about the content of a reasonable and practical set of data and indicators needs to be established and the *Planning and Environment Regulations* amended as necessary.

Benefits:

Allows for earlier indicators of the development industry to be published and available publicly.

Councils will be able to benchmark themselves against the rest of the State.

The data will provide early warning of potential 'overheating' in the permit system.

The data would assist identification of permit requirements that consume resources without generating significant outcome benefits.

Implications:

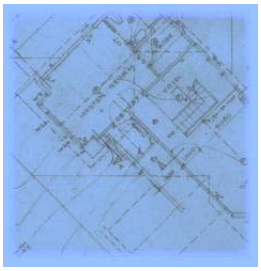
Legislative change to the planning register content to ensure particular information is collected consistently.

An appropriate reporting cycle (quarterly or annual) would need to be decided.

Establishment of effective electronic systems to register data and generate reports would need to be promoted. Alignment of commercial systems with new requirements may need to be encouraged by legislation.

Principles:

Improvement, Transparency



Enforcement

This section looks at the issue of enforcement methods. The Reference Group on Decision-making Processes (the Whitney Committee) considered that much of the confusion and criticism that currently exists about VCAT as an enforcement forum would be alleviated if prosecution jurisdiction were to be available at VCAT. This would enable punishment to be sought at the same time as rectification in the same forum.

These and other recommendations were set out in their *Report 3 Enforcement Methods*.

Option H1: Enable imposition of penalties through VCAT

Action:	Existing process	Proposed process
Allow VCAT to impose penalties as well as rectification orders.	▪ Application can be made to VCAT for an enforcement order. An enforcement order can stop activities from happening, require rectification. ▪ Prosecution is handled by the Magistrates Court and involves the imposition of penalties.	▪ VCAT becomes a 'one-stop-shop' for enforcement proceedings.

Discussion:

Confusion exists both in local government and amongst third parties as to the most appropriate enforcement mechanisms and forum to pursue. This confusion and the potential costs involved with initiating enforcement action, particularly through the Magistrates' Court, can be a disincentive to pursuing offenders more rigorously.

It is no longer true that Councils and third parties have to decide between rectification and penalty. The provision that originally prevented prosecution through the Magistrates' Court when there were enforcement proceedings before VCAT has been repealed. Nevertheless, the perception remains.

The Reference Group on Decision-making Processes (Whitney Committee) in its third report was of the view that VCAT is the most appropriate forum for enforcement action and its jurisdiction should be expanded to provide for prosecution and the imposition of penalties in addition to its administrative powers to issue enforcement order. The advantage of combining the powers of VCAT and the Magistrates' Court is that those wishing to take action can come to one forum for both punishment and rectification. Matters can be dealt with at the one forum more quickly, efficiently, cheaply and more expertly.

Benefits:

Enable pursuit of enforcement action, both rectification and prosecution, is one forum.

Allows the concentration of expertise at VCAT.

Clarifies enforcement mechanisms available.

Implications:

Establishment of an Enforcement List at VCAT under the umbrella of the Planning and Environment List.

A Tribunal hearing prosecutions may need to invoke rules of evidence.

Principles:

Justice

Option H2: Allow VCAT to cancel or amend a permit

Action:	Existing process	Proposed process
Enable the cancellation or amendment of a permit without need for a separate application.	▪ A separate application to amend or cancel a permit under Section 87 of the *Planning and Environment Act 1987*.	▪ The *Planning and Environment Act 1987* be amended to allow VCAT on the hearing of an enforcement order application to amend or cancel a permit without a separate application being made under Section 87 of the Act.

Discussion:

At present VCAT, on the hearing of an enforcement order application, does not have the power to cancel or amend a permit. This is only possible if the Council brings a separate application under Section 87 of the *Planning and Environment Act 1987*. VCAT would have greater ability to resolve the issues if VCAT had a power to order the cancellation or amendment of a permit, on the hearing of an enforcement order application, without the need of a separate application.

Benefits:

An additional 'tool' in enforcement proceedings.

Provides for the resolution of some matters without administrative hurdles.

Implications:

Amendment to the *Planning and Environment Act 1987*.

Principles:

Justice, Flexibility

Option H3: Enable VCAT to enforce an enforcement order

Action:	Existing process	Proposed process
More effective enforcement of enforcement orders.	▪ Recourse against a breach of an enforcement order is through the Supreme Court.	▪ The VCAT Act should be amended to enable VCAT to make all necessary orders, including contempt, if an enforcement order is breached. ▪ The legislation should be reviewed to ensure that Councils can enforce an enforcement order without recourse to the Supreme Court and if needed with police assistance.

Discussion:

It is an offence not to comply with an enforcement order and prosecution in the Supreme Court is possible. In such a prosecution it is not necessary to prove the scheme and controls or the breach of them, only that the order was properly made and had not been complied with. The penalties for failure to comply with an enforcement order or interim enforcement order are substantial. They involve both imprisonment and fines. The ability for the responsible authority to carry out work required by an enforcement order or interim enforcement order that was not carried out within the specified period is also provided for in the *Planning and Environment Act 1987*. The cost of this can be recovered from the person in default.

While the penalty for non-compliance can be quite high it is a significant disincentive for Councils or third parties that further action has to be pursued through the Supreme Court.

The Reference Group on Decision-making Processes (Whitney Committee) considered that to give enforcement orders some weight it may be appropriate to consider how the 'contempt' power might be implemented. At present this power is only exercisable by a judicial member of VCAT.

The power of VCAT to authorise another party, such as the police, to 'enforce' an enforcement order also needs to be broadened. There are circumstances, particularly in relation to licensed premises, brothels and the like, in which it would be more appropriate for the police to be able to take action.

Benefits:

Recourse for breaches of an enforcement order can be achieved in a cheaper and quicker forum.

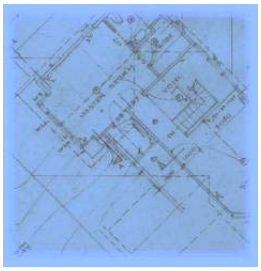
Authorisation of another party may enable enforcement to be undertaken by those with appropriate skills.

Implications:

Amendment to the *Victorian Civil and Administrative Act 1988.*

Principles:

Justice



The planning scheme amendment process

Around 400 amendments are prepared each year. Under the old format planning schemes (prior to 1998) about 900 amendments were prepared each year.

In 2002 only 4% of amendments were local policy based. Most involved the rezoning of land, correction of errors or updates of the scheme.

In 2002, 112 panels were appointed to hear submissions. The number of panels appointed is trending downwards since the introduction of the new format planning schemes in 1998.

Option J1: Minister's approval to prepare an amendment

Action:	Existing process	Proposed process
Require consent from the Minister before preparation of a planning scheme amendment.	▪ Amendment prepared, adopted and exhibited by council. Informal discussions with DSE may occur. ▪ Council adopts amendment and submits to the Minister for Planning for approval (following a panel hearing, if submissions received).	▪ Council submits a proposal for an amendment including the strategic justification. ▪ Minister evaluates against State policy and consents to complying proposals proceeding to preparation.

Discussion:

Victoria, which has the most open process of public consultation and independent evaluation of planning scheme amendment proposals, also has one of the least formal mechanisms for review of an amendment against state planning policy and interests prior to the amendment being exhibited.

In most states the relevant government department reviews a planning scheme amendment before it is placed on exhibition to determine whether it is consistent with state planning policy. A local planning authority cannot proceed with an amendment that is considered inconsistent with state policy.

- In Queensland, a draft amendment prepared by council must be submitted to the state government for assessment against state policy and interests. Although rarely exercised, the state has a veto power.
- In New South Wales, councils are required to notify the Minister of an amendment and advise whether the amendment is consistent with state and regional policy. Again the Minister (delegated to the Department of Urban Affairs and Planning) has a veto power to exhibition of an amendment, although there are exemptions available to enable an amendment still to be exhibited even if inconsistent with policy.
- In South Australia, a council prepares a statement of intent as part of initiating a planning scheme amendment, which is submitted to the Minister for agreement. The Minister must consult with the Department of Premier & Cabinet if the statement of intent is seriously at variance with the State Planning Strategy.
- In Tasmania, an amendment initiated by a council must be certified and sent to the Resource Planning & Development Commission, with the Commission able to decide whether or not the amendment can be exhibited.
- In Western Australia, planning scheme amendments can be initiated either by a proponent or a council. The process allows for assessment by the council under certain criteria including compliance with state policy and interest. If there is non-compliance or uncertainty, referral is required to the West Australian Planning Commission which has a veto power on exhibition.

There is liaison on many planning scheme amendment processes between local councils and the regional offices within the Department of Sustainability and Environment. Despite this some planning scheme amendments initiated at a local level lack adequate strategic justification. The panel process is sometimes the first occasion where the strategic justification is comprehensively evaluated.

Testing a proposal against State policy prior to preparation of an amendment would avoid situations where councils have spent considerable time and resources in preparing a planning scheme amendment only to be told to go back to the 'drawing board' at a late stage.

Benefits:

Councils receive an indication at the start of the process about whether they have sufficiently justified a planning scheme amendment and whether the amendment is consistent with State policy.

Implications:

Amendment to the *Planning and Environment Act 1987* to introduce a requirement for consent from the Minister for Planning prior to preparation of an amendment.

Principles:

Effectiveness

Option J2: Increase the status of the Strategic Assessment Guidelines

Action:	Existing process	Proposed process
Increase the status of the Strategic Assessment Guidelines.	▪ The Strategic Assessment Guidelines have no statutory implementation. ▪ Planning Panels Victoria do however ask all parties to address the guidelines. ▪ Some councils are using the guidelines in preparing exhibition documentation.	▪ Addressing the Strategic Assessment Guidelines will form part of the exhibition documentation. ▪ Greater statutory recognition will be given to the Strategic Assessment Guidelines, possibly as a Ministerial Direction.

Discussion:

A review of the operation of planning panels identified the *Strategic Assessment Guidelines Practice Note* as a valuable tool and suggested that the statutory status of the *Strategic Assessment Guidelines* should be enhanced, that they should be applied when an amendment is prepared, and the assessment should form part of the material exhibited with the amendment.

It is not always apparent that councils and proponents have undertaken or justified sufficient strategic assessment for an amendment in its early phases, in the exhibited material or explanatory report. This means that the panel inquiry is often the first time the *Strategic Assessment Guidelines* are properly applied.

If greater emphasis is placed on compliance with the *Strategic Assessment Guidelines* when an amendment is first prepared there are time and cost savings in the panel phase of the amendment process (and potentially the avoidance of submissions and necessity for a panel). The panel's role is then more simply to evaluate the assessment which has been undertaken by the planning authority, rather than having to undertake the assessment itself for the first time.

A number of councils have indicated that the *Strategic Assessment Guidelines* are a useful tool for use by panels in assessing amendments, but are unwieldy and repetitive, needed to be tightened in their focus, and occasionally triggered a level of inquiry out of proportion to the nature of the amendment. Some further review and updating of this practice note is therefore warranted,

Benefits:

The Strategic Assessment Guidelines would provide a clear framework for the formulation and assessment of amendments.

Greater thought would be required in justifying a planning scheme amendment and this would be done earlier in the amendment process.

Implications:

Amendment to the *Planning and Environment Act 1987* may be required to allow the guidelines to be given status as a Direction.

Principles:

Effectiveness, Transparency

Option J3: Include assessment of likely administrative cost of amendments

Action:	Existing process	Proposed process
Include resource implications of new planning provisions.	▪ There is no reference to the cost of introducing a new or amended planning scheme requirement at any stage of amendment consideration.	▪ Councils be required to include an assessment of the resource costs of implementing and administering new requirements when preparing an amendment.

Discussion:

Planning schemes are subordinate legislation under the *Interpretation of Legislation Act*. An amendment to a planning scheme does not therefore require the preparation of a Regulatory Impact Statement. The Explanatory Report prepared as part of planning scheme amendment documentation takes on this role in part. The *Planning and Environment Act 1987* is not specific about what an Explanatory Report must include but the *Planning and Environment Regulations* and Ministerial Directions can further stipulate matters to be included.

The introduction of new or amended planning scheme requirements can often have significant resource implications for a council. The quantification of the resource implications of an amendment upon the council must be a relevant consideration. This requirement could form part of the revised Strategic Assessment Guidelines (Option H2) or as part of preparing an Explanatory Report.

Benefits:

Councils would be fully aware of the resource implications of introducing new or amended planning scheme requirements.

Resource assessment would complement councils auditing their planning schemes (Option G1) on a regular basis to ensure that the scheme includes only those requirements that deliver the intended outcomes of council are included.

Implications:

Amendment to the Planning and Environment Regulations may be required or a Ministerial Direction.

Principles:

Improvement, Transparency

Option J4: Allow approval of some amendments by councils

Action:	Existing process	Proposed process
Approval of certain amendments delegated to councils.	▪ Ministerial approval required for a planning scheme amendment.	▪ Minister indicates prior to exhibition whether planning scheme amendment can be approved by council or requires Ministerial approval.

Discussion:

Some planning scheme amendments have no implications for State policy or interests and largely involve administrative processing at the end of the amendment process. This could effectively be delegated to councils in circumstances where there are no State policy implications.

A basic process of council approval could involve:

- A check by the Minister for Planning (potentially delegated) for consistency with State policy (Option H1).
- Compliance with the *Strategic Assessment Guidelines* (Option H2).
- A requirement for review and report by an Independent Panel, irrespective of whether submissions are received. Where there are submissions, this could simply be on the papers as suggested in Option H5).
- Approval by Council, provided the amendment is consistent with the panel recommendations.

Where Council seeks approval for an amendment in a form different to the recommendations of a panel, the amendment would be submitted to the Minister for Planning with reasons for the changes. The Minister could consider the amendment or agree to the Council approving it.

The Minister could delegate certain 'types' of amendments for approval by council or alternatively the Minister's views could be sought on every occasion. Provisions similar in intent to those existing in the permit process, that allow the Minister for Planning to 'call-in' an amendment or alternatively allow a Council to ask the Minster to approve an amendment would need to be put in place.

Benefits:

Avoids unnecessary processing by both councils and the Minister for Planning for amendments with only a local impact.

Empowers local decision making where State policy and interests are not affected.

Implications:

Legislative amendment to the *Planning and Environment Act 1987* would be required in consultation with councils.

While this process would require additional panel hearings, there is a cost recovery mechanism for this.

Principles:

Effectiveness

Option J5: Promote 'on the papers' panel hearings

Action:	Existing process	Proposed process
Promote 'on-the-papers' panel hearings.	▪ Submissions to an amendment result in the mandatory requirement for a panel ▪ In the majority of instances a public hearing is held.	▪ All amendments require panel consideration however if no submissions or parties agree no public hearing would be required on the papers hearing should be promoted.

Discussion:

One mechanism to simplify the panel process where there may be only one or two matters in issue, or only one or two submitters, would be to give those parties the opportunity to make detailed submissions in writing, but to have the panel consider the matter and prepare its report "on the papers" without a formal public hearing.

The principles of natural justice require that parties be given the opportunity to be heard by a panel, this does not always require a public hearing. It may be sufficient in many instances to simply give parties the opportunity to make submissions in writing, or to comment in reply on the submissions made by others. Being "heard" doesn't necessarily require being heard orally in person in all instances.

At present, Section 160 of the *Planning and Environment Act 1987* requires that a panel must conduct its hearings in public unless any person making a submission objects and the panel is satisfied that the submission is of a confidential nature. In these limited situations, the panel is able to hear the evidence "in camera".

If panels were required for all amendments it is necessary to ensure the process is as streamlined as possible.

Benefits:

For some planning scheme amendments the time and cost of a panel hearing can be avoided by an 'on the papers' hearing.

Implications:

There are no legislative implications provided natural justice is adhered to.

Principles:

Timeliness

Option J6: More efficient administrative procedures for amendments

Action:	Existing process	Proposed process
Review the planning scheme amendment documentation.	▪ Manual processing of amendment documentation at all phases (except mapping). ▪ Time consuming and repetitive documentation.	▪ Increased electronic transfer of amendment documentation. ▪ Reduction (if possible) of documentation.

Discussion:

The administrative procedures for planning scheme amendments have not changed substantially for a considerable period of time. The procedures are often time consuming and repetitive and there is scope to streamline and refine them. In particular, consent procedures were not designed with electronic processes in mind. Electronic lodgement has recently been introduced through the Quickplace system, however further enhancement of electronic transfer and approval mechanisms can be investigated.

Matters that need to be specifically addressed include:

- Establish a revised standard format for the Explanatory report, including linkages to the requirements of the Strategic Assessment Guidelines and any requirements made by the Minister under Option J1.
- The exhibition documentation
- The hearing documentation and processes
- The approval documentation

Benefits:

Less time required to fulfil planning scheme amendment documentation requirements.

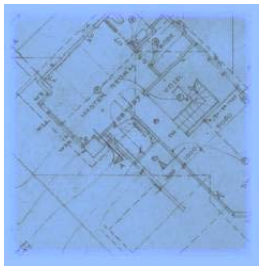
Less opportunity for legal challenge to an amendment on the basis of procedural deficiencies.

Implications:

Potential amendment to the *Planning and Environment Regulations*.

Principles:

Timeliness



Section 173 agreements

There is concern that section 173 agreements are being liberally applied with little consideration to the implications of the difficulties to amend or remove requirements once they are registered. This along with preparing relevant documentation for a 173 agreement can contribute substantially to the workloads of council planners and the costs of applicants.

Option K1: Review the function and application of s173 agreements

Action:	Existing process	Proposed process
Initiate a review of the function and application of s 173 agreements	▪ S173 agreements are widely applied with little monitoring of their content, application, appropriateness or costs.	▪ Review the application of the current provision. ▪ Investigate whether alternative mechanisms can be more appropriate or efficient.

Discussion:

S. 62 (2) (4) of the P&E Act specifies that a responsible authority may include a condition in a planning permit that the owner of the land (or an applicant who may become the owner of the land) is to enter into an agreement with the responsible authorities (s. 173). Other persons may also be parties to the agreement. The circumstances in which section 173 agreements can be amended once registered are limited. The Act provides that, once registered, the obligations contained in the section 173 agreement bind future owners. Consequently the decision to impose a section 173 agreement as a permit condition is a serious matter and it would appear that councils are frequently applying them without seriously considering the implications. Applying a s173 agreement in addition to permit conditions can be a considerable extra cost and delay to an application.

The scope of what may be included in a s173 agreement is broad. Section173 agreements are frequently applied to enforce building envelopes as well as to ensure on going control for matters that may not be able to be controlled once the use and or development has started or been completed. It is arguable that at this stage any ongoing conditions of the planning permit are no longer enforceable. Section 173 agreements are also frequently used to ensure that new owners are aware of any restrictions associated with the land.

Section 173 agreements do not seem to be consistently removed when they have expired or been fulfilled.

Clause 56 of the planning scheme applies to residential subdivision. Standard C21 sets out the requirements for lot area and dimensions and for applying building envelopes.

The building regulations refer to the term 'approved' building envelope and require that the building envelope be:

- part of a planning permit for subdivision and
- be in an agreement under section 173 of the P & E Act 1987 or
- be shown as a restriction on a plan of subdivision registered under the Subdivision Act 1988 and the agreement or restriction to be registered on the title of the land.

Building envelopes play an important role in ensuring the future siting of dwellings.

Alternative measures could be explored to reduce the need to rely on s173 agreements, including:

- Acknowledge ongoing permit requirements on the planning certificate as part of the Section 32 information required at the point of sale of property.
- Acknowledge existing permits as a note on the title.
- Explore legislative change to ensure that conditions are enforceable.

Benefits:

Having a single means of applying all relevant conditions would be simpler and more efficient.

Reduces unreasonable extra costs and conditions on an approval.

Reduces workloads of planners.

Implications:

Legislative change would be required.

Principles:

Difficulty, Timeliness, Improvement

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